AGENDA C-2
OCTOBER 1998

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: September 30, 1998

SUBJECT: Crab Vessel (permit) Buyback Program

ESTIMATED TIME
1 HOUR

ACTION REQUIRED

Review program elements and options and give direction on further development.

BACKGROUND

Last fall the Council reviewed an initial draft of a Buyback Business Plan (BBP) for the BSAI crab fisheries, submitted by the Crab Reduction and Buyback (CRAB) Group. At that time you endorsed the efforts of the CRAB Group as well as the concept of the buyback program, and we sent a letter to NMFS expressing the Council's endorsement to proceed with such a buyback program. Since that time progress has been somewhat on hold for two primary reasons: (1) the generic buyback program guidelines have yet to be published by NMFS (though several drafts have been in various stages of circulation); and, (2) the Council, in late 1997 and early 1998, began consideration of proposed amendments to the LLP which could add new participation requirements for crab LLP qualification, and thereby affect the number of eligible vessels and the specifics of a crab buyback program. Resolution of the Council's proposed action, as well as perhaps resolution of S. 1221, will be necessary before the CRAB business plan can be finalized and submitted for industry referendum. Certain provisions of S. 1221 appear to overlap with the proposed amendments of the Council and create some uncertainties as to the number of vessels eligible to fish BSAI crab.

Also required will be an analysis of the buyback plan provisions as required by the Magnuson-Stevens Act and generic guidelines yet to be finalized. Item C-2(a) is a copy of the Act provisions. Item C-2(b) is an April 16, 1998 letter from NMFS which recognizes our request to proceed with the buyback program, but which also contains a list of statutory determinations which must be completed prior to Secretarial review of the buyback program. Those same requirements likely will show up again in whatever guidelines are finally published.

NMFS emphasizes that consistency with our existing FMP is a primary criterion for review, along with timing of any necessary FMP amendments, as well as adequacy and feasibility of the BBP, justification for the program, prevention of replacement capacity, and evidence that it is cost-effective and capable of repaying the debt obligation. A series of questions outlines what must be answered prior to a more formal submittal. Many of those are answered by the most recent version of the CRAB BBP, dated June 5, 1998 and included as Item C-2(c). Others will need to be answered by Council/NMFS staff, working with the CRAB Group, prior to formal submittal. My cover letter attached to the CRAB BBP reflects our efforts to help distribute the BBP to the crab industry and solicit comment prior to this meeting. Item C-2(d) contains comments received to date, both opposing and supporting the current buyback plan.

My recommendation at this time, assuming Council resolution of the crab LLP eligibility requirements, and consideration of S. 1221, is that we review the major provisions of the BBP and determine whether any revisions are warranted, or whether there are plan amendments we need to pursue to enable the buyback program to develop. For example, a primary provision of the BBP is for two classes of licenses - 'A' licenses for which $45 million of buyback funds are earmarked, and 'B' licenses for which $15 million in funds are earmarked. The 'B' license category contains restrictions on use and transferability which are inconsistent with the Council's current FMP. If the Council's LLP action at this meeting reduces the fleet to a certain point (below 280 licenses), the 'B' licenses will be moot (according to the BBP as drafted) and there will be no inconsistency. However, to the extent the 'B' licenses remain part of the BBP, then the Council may need to consider whether to initiate an FMP amendment which creates two license categories, or whether the CRAB BBP needs to be revised.

This and other major provisions of the BBP could be discussed at this time, with input from CRAB Group representatives. Then the staff needs to be tasked to work this fall and winter to address the specific statutory determinations (based on the expected guidelines) and bring that back for Council review in February, prior to formal submittal to the Secretary.

<u>Item C-2(e)</u> is an informational item describing the East Coast pilot buyback program initiated by NOAA.

16 U.S.C. 1861a
M-S Act § 312

(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

(b) FISHING CAPACITY REDUCTION PROGRAM.--

(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, or the Governor of a State for fisheries under State authority, may conduct a fishing capacity reduction program (referred to in this section as the 'program') in a fishery if the Secretary determines that the program--

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan--

(i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(C) is cost-effective and capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay--

(A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

(4) The Secretary shall consult, as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

(c) PROGRAM FUNDING.--

(1) The program may be funded by any combination of amounts--

(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

(B) appropriated for the purposes of this section;

(C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

(D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

(d) INDUSTRY FEE SYSTEM.--

(1) (A) If an industry fee system is necessary to fund the program, the Secretary, at the request of the appropriate Council, may conduct a referendum on such system. Prior to the referendum, the Secretary, in consultation with the Council, shall--

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting.

(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall--

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish; and

(D) be in effect only until such time as the debt obligation has been fully paid.

(e) IMPLEMENTATION PLAN.--

(1) The Secretary, in consultation with the appropriate Council or State and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period an implementation plan, including proposed regulations, for each program. The implementation plan shall--

(A) define criteria for determining types and numbers of vessels which are eligible for participation in the program taking into account characteristics of the fishery, the requirements of applicable fishery management plans, the needs of fishing communities, and the need to minimize program costs; and

(B) establish procedures for program participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions for participation which the Secretary deems to be reasonably necessary to meet the goals of the program.

(2) During the 60-day public comment period--

(A) the Secretary shall conduct a public hearing in each State affected by the program; and

(B) the appropriate Council or State shall submit its comments and recommendations, if any, regarding the plan and regulations.

(3) Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate Council or State, shall analyze the public comment received and publish in the Federal Register a final implementation plan for the program and regulations for its implementation. The Secretary may not adopt a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum under this section.

101-627

SEC. 313. NORTH PACIFIC FISHERIES CONSERVATION 16 U.S.C. 1862

104-297

(a) **IN GENERAL.**--The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which--

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

102-582

(b) **STANDARDS.**--

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to--

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

AGENDA C-2(b)
OCTOBER 1998

UNITED STATES DEPARTMENT
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

APR 16 1998

Clarence G. Pautzke
Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

RECEIVED
APR 21 1998
N.P.F.M.C

Dear ~~Mr. Pautzke~~ Clarence:

Your October 10, 1997, letter to Michael Grable responded to our informal request for comments about a draft advance notice of proposed rulemaking for the buyback provisions of the Magnuson-Stevens Act. It also endorsed an industry buyback initiative in the Bering Sea and Aleutian Islands king and tanner crab fishery.

I apologize for not having responded earlier to the Council's endorsement of the crab initiative. Since your letter, we have informally reviewed a draft buyback business plan for the crab initiative and asked the business planners to clarify or expand some aspects. We have also been working on a general rules proposal for the buyback provisions. Ted Kronmiller drafted one set of proposed rules for our consideration. Michael Grable independently drafted another. We are presently reviewing these drafts and plan to propose general buyback rules as soon as we finish our review.

We appreciate the Council's support of the crab initiative. We regard your letter as a statutory request for a buyback in this fishery. We congratulate the business planners on the energy and enterprise they have devoted to this buyback initiative. Let me assure you that the present lack of buyback rules will not defer our consideration of what we may all now regard as the crab fishery buyback proposal. The attachment indicates what we believe we need to proceed with this proposal.

I urge the Council to help the business planners move this proposal forward. We will assist the Council and the business planners by providing whatever procedural guidance and assistance may be necessary to accommodate Council and business planner progress. Your two key NMFS contacts for this buyback proposal are Jay Ginter in our Alaska Regional Office and Michael Grable here in the Office of Sustainable Fisheries.

I believe this proposal will require extraordinary cooperation and coordination from the business planners, the Council, and NMFS. I look forward to this opportunity.

Sincerely,

Gary

Gary C. Matlock, P.h.D.
Director, Office of
Subtainable Fisheries

Attachment

(1) STATUTORY DETERMINATIONS.

(a) Improving Conservation and Management. The business plan must demonstrate, and the Council must confirm, that the buyback business plan (BBP) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery.

The plan need only comply with one of these criteria. Does the Council believe that the BBP complies with one or more of these criteria? If so, how? If not, why not and what more does the BBP need to do in this respect?

(b) FMP Consistency. The business plan must demonstrate, and the Council must confirm, that the BBP is consistent with the fishery Management plan (FMP) for this fishery.

Does the Council believe the BBP is consistent with the FMP for this fishery? If so, how? If not, why not and what more does the BBP need to do in this respect? Does the BBP need modification to make it consistent with the FMP or does the BBP need to propose FMP amendments to make the FMP consistent with the BBP? What is the nature of any required modifications or amendments? Does the Council believe there is a strong prospect that the BBP and FMP will become consistent with one another at an appropriate point in the buyback process? Why, and how? What FMP amendments and/or BBP modifications, would most likely be required? Which are the most feasible? At what point in the buyback process would they occur? How are the business planners and the Council approaching this aspect of the buyback process?

We realize that these BBP/FMP consistency questions are difficult to answer at this point in the evolution of the FMP, let alone the buyback process itself. There is, however, little point in proceeding further with any buyback process unless both the business planners and the Council have strong reason to agree that the BBP and the FMP will, at the appropriate point in the buyback process and through whatever combination of FMP amendments and/or BBP modifications, become consistent with one another.

(c) __Replacement Prevention__. The business plan must demonstrate, and the Council must confirm, that, if the BBP is implemented, the FMP for this fishery will:

1. (i) Impose a moratorium on new entrants, restrict vessel upgrades, and provide other effort control measures, taking into account the full potential fishing capacity of the fishery's fleet, prevent the replacement of fishing capacity removed by the buyback, and

(ii) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch.

Does the Council believe that, if the buyback were to be implemented, the FMP complies with item (3) above? If so, how? If not, why not and what more does the BBP need to do in this respect? Does the BBP need to propose specific FMP amendments in this respect? Does the Council believe there is a strong prospect that the FMP can be amended, at the appropriate point in the buyback process, to comply with the requirements in item (3) above? Why, and how? What FMP amendments would most likely be required? Which are the most feasible?

(2) __FMP AMENDMENT TIMING__.

Few BBPs will, at the start of the buyback process be consistent with, FMPs. Many FMPs may not at the start of the buyback process initially provide adequate post-buyback safeguards. Buyback business planners and Councils must continuously consider these aspects and be prepared at every stage of the buyback process to appropriately amend BBPs, FMPs, or both.

Where a buyback requires FMP amendments (and we believe that most buybacks will), at what point in the buyback process should they most appropriately occur?

As we presently envision the industry-funded buyback process, a referendum may have to occur after we have completely developed a buyback implementation plan (BIP) but before we begin the 105-day statutory process that starts with proposing a buyback implementation rule (BIR). It might make more sense for a referendum to occur after we have proposed, but before we have adopted, a BIR. Nevertheless, the 105-day BIR process the statute requires does not appear to provide sufficient time for a referendum between BIR proposal and BIR adoption. The only other alternative is for the referendum to occur after BIR adoption, but it may make little sense to have adopted a BIR before referendum results first demonstrated the need to have done so.

However these aspects of the evolving buyback process may eventuate, all required FMP amendments must be in place at the point at which the buyback fishery's permit holders are locked into repaying the cost of actual buyback. It seems unlikely that referendum voters will, for example, approve an industry-financed buyback unless clear provision has first been made for whatever FMP amendments might be necessary to adequately safeguard the harvesting efficiencies buyback produces. Actual buyback will not be able to start until we have determined, through a buyback bidding process, that the actual buyback will produce results within the cost/capacity specifications upon which a referendum was based. This will require buyback bids to be specifically enforceable offers to relinquish permits or permits and vessels. Otherwise, as our experience in the North Atlantic multispecies buyback has demonstrated, bid-withdrawals could rapidly increase buyback cost/capacity ratios beyond those that a referendum might have specified.

We will appreciate the Council's advice about this aspects of the crab buyback proposal. What is the appropriate point in the buyback process for the required FMP amendments to be in place? Does the length and complexity of the FMP amendment process suggest that the required FMP amendments be provisionally adopted at an appropriately early stage in the buyback process (i.e., to be void <u>ab initio</u> if actual buyback does not occur and effective only when it does)?

(3) <u>BBP ADEQUACY</u>.

The business planners have made substantial progress. In industry-funded buybacks, BBPs will form the basis of BIPs upon which permit holders and vessel owners decide, in buyback referenda, whether to obligate their future fisheries revenues to repaying buyback costs. BBPs will also form the basis for BIRs, invitations to bid, and actual buyback activity. Because NMFS will be the buyback lender, it would be a conflict of interest for us to also be directly involved in preparing BBPs.

Like any lender considering a prospective borrower's credit request, we need to be in the position of evaluating a borrower's business plan for an investment whose cost that borrower will be obligated to repay. The buyback borrower will, in effect, be everyone who after buyback catches and sells the buyback species. Like any other business plan, BBPs must convince the prospective buyback lender that a buyback:

(a) Is feasible,

(b) Can be accomplished in a known way,

(c) Has a reliably projectable range of costs and results,

(d) Will meet all known requirements, and

(e) will produce a return that justifies the investment and enables loan repayment.

Although we cannot be directly involved in BBP preparation, we can assist in at least two ways. We can:

(a) Provide the business planners with whatever fisheries data, statistics, or other disclosable information we possess that may be relevant to developing business plans; and

(b) Evaluate BBPs and identify areas that we believe need further consideration

We are presently doing the latter with the draft crab BBP.

One of the primary hurdles in an industry-funded buyback will be the buyback borrower itself. Relevant permit and/or vessel owners must, in effect, approve the BBP by voting for a BIP that we will base on the BBP. A BBP will not succeed unless it provides referendum voters with a clear and realistic investment proposal for which at least two-thirds of them are willing to mortgage their future. This is the sine qua non of industry-funded buybacks. It should be one of the business planners' chief concerns.

This is a difficult business planning task because it involves variables that cannot be known with certainty until after buyback results are known. Until a buyback is actually attempted, no one can know with certainty how much capacity can be bought back at what buyback cost. Other loan applicants must also project variables, but these projections can often be assessed against comparable business experience. There is little experience with which to compare projections of buyback variables. Business planners should, consequently, devote particular attention to the following primary considerations:

(a) Designing a methodology best capable of buying back the most capacity at the least buyback cost, and in the shortest time;

(b) Ensuring compliance with all requirements of the buyback's statutory authority, any buyback rules that we may adopt, and the FMP;

(c) Projecting the capacity most likely to be bought back at projected buyback cost levels (or, alternatively, the most likely buyback cost of the capacity projected to be bought back);

(d) Based on the best multi-year fishing revenue/expense data available for historical fishing operations in the buyback fishery (and any other relevant productivity measures), determining how a buyback is projected to affect the economics of post-buyback fishing--most particularly, the extent to which a buyback is projected to increase the ratio of gross revenue to fixed cost and improve other productivity measures of vessel operation;

(e) Determining the fee rate most likely needed to amortize the buyback loan, the extent to which increases in the remaining capacity's ratio of gross revenue to fixed cost (and other relevant productivity measures) will allow post-buyback vessels to afford the required fee, the likelihood of the fee repaying the buyback loan, and what the FCRA cost of a buyback loan might reasonably be;

(f) Designing referendum specifications that anticipate the likely range of projected implementation results (which cannot be predicted with certainty in advance) sufficiently to produce a successful invitation and accommodate implementing actual buyback; and

(g) Designing implementation procedures that ensure reliable and timely implementation results conforming to the referendum specifications.

One of our concerns after informally reviewing the draft BBP was the proposal to produce, from what the BBP assumes will be one class of post-buyback permits ("B" licenses), loan-repayment fee income based on something other than a percentage of the ex-vessel value of buyback species landed after buyback. This was necessitated by the BBP's assumption that "B" licenses would often be inactive. Such a fee is inconsistent with buyback's statutory authorization. The exclusive statutory means of buyback-loan repayment is fee income equal to not more than 5 percent of the ex-vessel value of actual post-buyback landings.

Additionally, we are uncertain that we fully understand the rationale for much of what the draft BBP proposes regarding the "B" licenses and their evolution.

We understand that the business planners are now addressing a number of other concerns that we informally related to them.

We would appreciate the Council's candid evaluation of the draft BBP, not only from the standpoint of FMP consistency and post-buyback safeguards, but also from the standpoint of the BBP's basic sufficiency. Is the BBP's basic buyback design and methodology a viable one in this fishery? Does the BBP pose a strong potential for referendum voters to approve a BIP based on the BBP? Does the projected buyback cost/capacity ratio appear to be reasonable? Is the BBP sufficiently detailed, comprehensive, and complete to serve as the basis for referendum specifications, a BIP, a BIR, and actual buyback implementation? Does the BBP have a strong potential for successful implementation? If not, what more does the BBP need to do?

(4) CREDIT AUTHORITY.

The credit authority required to support the buyback loan is another area that the business planners, the Council, and

Government must consider. All Federal loan activity, including buyback loans, must, under the Federal Credit Reform Act (FCRA), have first been authorized in appropriation acts. Loan capital need not be appropriated. Once we have adequate FCRA authority, we will simply borrow the necessary loan capital from the U.S. Treasury and re-lend it to the buyback borrower by making buyback payments to successful buyback bidders. All that need be appropriated is (a) the authority for the loan if no FCRA cost is involved or (b) the loan's FCRA cost if one is involved.

A FCRA cost is the amount of loan principal the Federal lender estimates will be uncollectible. Our preliminary position is that buyback loans will involve no FCRA cost, because their repayment has first right to 5% of an entire fishery's future gross revenues until they are repaid. If this position holds, then the only FCRA authorization needed is the loan authority itself. Sufficient loan authority does not now exist. If Congress has not provided sufficient loan authority by the time buyback development has ended, we see no choice but to submit a supplemental appropriation request at that time for sufficient FCRA loan authority. If the credit authority necessary to support a buyback loan has not been made available before the buyback development process requires it to be available, the buyback process may be considerably delayed pending availability of sufficient credit authority.

If the crab buyback is implemented, in what fiscal year does the Council anticipate the necessary credit authority would have to be available?

United States Senate

WASHINGTON, DC 20510

April 21, 1998

The Honorable William M. Daley
Secretary of Commerce
Department of Commerce
14th St. & Constitution Ave., N.W.
Washington, D.C. 20230

Dear Mr. Secretary:

We are writing to urge your immediate assistance in moving forward on regulations to support certain critically needed fishing-vessel and fishing-license buyback programs.

The enactment of the Sustainable Fisheries Act (SFA), amending the Magnuson-Stevens Fishery Conservation and Management Act, reflected the seriousness of Congress' concern about the state of our Nation's fisheries. The SFA provided important statutory authority and direction to support the necessary remedial measures by your Department. In particular, the SFA responded to concerns about the impact of excess fishing capacity -- overcapitalization -- in major fisheries.

While much of the debate over overcapitalization has revolved around whether individual fishing quota systems (IFQs) are reliable or appropriate means of dealing with the problem, Congress also recognized that in some areas, there was a need to act swiftly and decisively. Section 312 of the Magnuson-Stevens Act provides authority for the reduction of excess fishing capacity through programs for the purchase and permanent retirement of vessels and licenses. Particularly innovative and cost-effective is the provision for funding of such programs through federal loans to industry.

The Bering Sea crab and Pacific Coast groundfish fishing industries, both of which suffer from excess harvesting capacity, have taken the initiative on the establishment of buyback programs under section 312.

An industry group representing Bering Sea crab fishers has held extensive consultations with others in the industry and with the National Marine Fisheries Service, and has thoroughly briefed the North Pacific Fishery Management Council. In preparing a comprehensive proposal, this group has commissioned a scientific survey of vessel owners, an in-depth financial analysis of the fishery, a detailed preliminary business plan on the assessment of fees for repayment of a federal loan, extensive legal analyses, a draft of regulations to implement section 312, and a proposal for necessary amendments to the applicable fishery management plan. These documents have been provided to the North Pacific Council and to your Department.

The Honorable William M. Daley
April 20, 1998

Similarly, the Pacific Fishery Management Council and its advisory bodies identified excess fishing capacity as the single most serious problem facing management of West Coast groundfish resources. In November of 1996, shortly after the Sustainable Fisheries Act was enacted, the Pacific Council named members to a buy-back committee, which prepared a business plan for the purchase and retirement of groundfish trawl permits. The plan estimated the cost, revenue, and benefits of the program in addition to detailing the target reduction, bid mechanism, and bid acceptance policy. In November 1997 the Pacific Council accepted the committee's report and forwarded the plan to your Department.

The North Pacific and Pacific Fishery Management Councils have responded favorably to these industry-based efforts. The Councils have dedicated scarce resources to the development of the buyback programs and have formally requested that the Department of Commerce proceed in accordance with section 312.

Action is sorely needed. The condition of both the Bering Sea crab and Pacific groundfish resources off Washington, Oregon and California is poor, and economic conditions for operators in these fisheries are very poor. The proposed buybacks provide a means -- at no expense to the taxpayer -- for these industries to provide for their own improvement.

In addition, the Washington Department of Fish and Wildlife is conducting a salmon permit buy-back for coastal and Columbia River fisheries begun in 1995 under the Department's Northwest Emergency Assistance Program (NEAP). While NEAP is no longer funded, additional funds for the buy-back program were provided in fiscal year 1997 under the authority of Section 312. With severe harvest restrictions yet again being proposed by the Pacific Fishery Management Council, the need to continue the reduction of excess capacity in these fisheries is essential.

In a closely related matter, commercial salmon fishers in the State of Washington also are pursuing a license buyback program for non-Tribal fishers involved in fishing for sockeye salmon in the northern border area. This program could be essential to securing an agreement with Canada for the conservation of U.S. Pacific salmon. Establishment of a buyback program would facilitate a reduction in overall fishing capacity. This is widely seen as a key element in any possible agreement for a reduction of Canadian interceptions of depressed U.S. Pacific salmon stocks. Here again, regulatory action consistent with section 312 of the Magnuson-Stevens Act is a critical element.

In view of these circumstances, we are disappointed that the Department has not acted expeditiously on the regulations needed to guide the further development and successful completion of these and other buyback industry-initiated programs. The Sustainable Fisheries Act became law over eighteen months ago. We understand that draft regulations to implement section 312 have been awaiting action by the National Marine Fisheries Service since late December of 1997.

The Honorable William M. Daley
April 20, 1998

We note and appreciate the efforts of financial officers in the National Marine Fisheries Service to assist affected industry groups in the development of business plans for the crab and groundfish buybacks. However, that spirit of cooperation needs to extend to those in policy roles, so as to ensure that the regulations -- a draft of which has been available for some time -- are promulgated in a timely manner.

Each day of delay is damaging to those who are reliant on the agency for an efficient response. We urge you to proceed immediately with publication in the Federal Register of the proposed buyback regulations. We oppose any further -- and in our view unnecessarily redundant -- review and revision by an outside contractor. If problems exist, the process of publishing a proposed rule is the accepted method of discovering them.

Sincerely,

Patty Murray

Frank H. Murkowski

Ron Wyden

Ted Stevens

Crab Buy-back

The CRAB Group

Capacity Reduction And Buyback for crab licenses in the Bering Sea and Aleutians

TO: ALL OWNERS OF BERING SEA / ALEUTIAN ISLANDS CRAB FISHING VESSELS

Please consider progress to date (March 18, 1998)-

- **10/96** The Magnuson - Stevens Fishery Conservation and Management Act became law. One of its many changes authorized members of the fishing industry to design and conduct industry-finded buybacks of licenses, if approved by 2/3 vote in an industry referendum.
- **1/97** Members of the BSAI crab industry met to discuss the feasibility of buybacks in reducing overcapitalization in the BSAI crab fisheries.
- **3/97** The Capacity Reduction And Buyback (CRAB) Group, an Alaska Non-Profit Corporation, was formed.
- **3 - 9/97** Research, information gathering, public meetings and polling:
  91% of vessel owners think it is important to reduce the size of the fleet
  67% of vessel owners are willing to pay for a buyback
  23% of vessel owners would consider selling permits in a buyback
- **9/97** The Secretary of Commerce approved LLP - limited entry for BSAI crab - <u>authorizing 427 vessel licenses to be issued</u>.
- **9/97** The NPFMC requested the Secretary of Commerce to work with CRAB to develop a buyback plan for the BSAI crab fisheries.
- **12/97** NMFS was briefed, members of Congress were informed, and their assistance was secured
- **12/97** A preliminary draft business plan was prepared for BSAI crab license buyback.
- **1/98** The NPFMC began consideration whether to reduce the number of licenses under LLP - this would make a buyback more affordable, and more effective.
- **2/98** Draft regulations for implementing the buyback provisions of the Magnuson - Stevens Fishery Conservation and management Act passed NOAA legal review.
- **3/98 CRAB is one year old.**

Our first year has been very successful - thanks to your ideas and support.
WE NEED YOUR HELP NOW —— DO SOMETHING <u>PRODUCTIVE</u> FOR YOUR FUTURE
We need funds: to overcome bureautic inertia, fully inform the fleet, and bring about a referendum.

YEAR TWO of CRAB:

- Publish draft regulations for public comment.
- Finalized buyback regulations
- Complete buyback EA/RIR
- Receive public comments
- Finalize business plan
- NPFMC final action on LLP "recent participation" requirements
- Circulate information, publicize and conduct public meetings on the buyback program; secure NPFMC comments on the buyback plan.
- Secretary of Commerce conducted referendum of all LLP crab vessel owners- if approved-
- Complete implementation procedures.
- THEN, if approved by the Commerce Department the buyback program can begin...

THE BEST FISHERY DEAL GOING:
CRAB GROUP MEMBERSHIP

SET SOME GEAR ON <u>THE HOT SPOT</u>!

1 Pot (prospector)......$1,000
2 Pots $2,000
Set a String............$4,000
Full Share........ 1% of gross

The CRAB Group
114 S. Franklin St.- Suite 200
Juneau, AK 99801

Questions or comments? Call one of our board!

Gordon Blue, Sitka	(907) 747-7967
Frank Danner, Anchorage	(907) 563-3222
Rick Hastings, Lynnwood	(425) 742-8609
Spike Jones, Seal Rock	(541) 563-4321
Richard Powell, Kodiak	(907) 486-4250
Jeff Steele, Kodiak	(907) 486-6864
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Donor level:
( ) *Prospector................($ 1,000)*
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114 S. Franklin St,
Suite 200
Juneau, AK 99801

Sign me up!

Name:______________________ Vessel(s):______________________

Address::____

______________________ State:______ ZIP:____________

(Area Code) & Phone Number:______________ FAX:______________

e-mail:______________

North Pacific Fishery Management Council

AGENDA C-2(d)
October 1998

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director

Telephone: (907) 271-2809

605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Fax (907) 271-2817

July 13, 1998

Notice to
Participants in BSAI Crab Fisheries

Enclosed for your comment is a draft vessel buyback business plan developed by the Capacity Reduction and Buyback Group (CRAB) for Bering Sea and Aleutians crab fisheries. This plan has been under development since early 1997. It responds to a new provision in the Magnuson-Stevens Fishery Conservation and Management Act, the Fishing Capacity Reduction Program in Section 312(b). That provision requires a regional management council such as the North Pacific Fishery Management Council, or a State Governor, to set the ball rolling on any buyback program by sending an official request to the Secretary of Commerce to conduct a fishing capacity reduction program.

The North Pacific Council made its initial request for such a program in the crab fisheries after reviewing the CRAB Group's draft business plan last September. CRAB Group, Inc. is an Alaska non-profit corporation whose sole purpose is to design and implement a buyback plan to reduce fishing capacity and improve the economic well-being of the crab fisheries. CRAB's seven-member Board, or steering body, includes Gordon Blue (Board Chairman) of Sitka, Frank Danner of Anchorage, Rick Hastings of Lynnwood, Richard Powell and Jeff Steele of Kodiak, and David Wilson of Sand Point. The seventh member, Spike Jones of Seal Rock, is seeking a replacement.

The Council's request from last fall has languished for almost a year primarily for two reasons. First, NMFS has been developing national guidelines for buyback programs that would apply to submissions from anywhere in the nation. Those guidelines are almost complete now and about to be published within the next month. Henceforth, any buyback program will have to adhere to them. Second, the Council is considering changes to its limited entry requirements for the crab fisheries which, if adopted, could further reduce the numbers of vessels eligible to participate in future BSAI crab fisheries. A final decision on entry criteria will be made at the coming October meeting. It will establish exactly how many vessels will qualify for the fishery, which in turn will influence the need for a buyback program.

The Seattle Council meeting, October 7-11, at the Doubletree Sea-Tac, could be important to you. We will address proposed changes to crab limited entry, and then review the enclosed buyback plan and your comments. The Council may then task the staff to develop an accompanying analysis of issues identified in the national guidelines for buybacks. This analysis and the latest draft plan will then be sent to you in November for further public comment. The Council's final consideration of the buyback plan likely will occur in December (or possibly February 1999), and then the formal request will be sent to the Secretary of Commerce.

I am sending this draft document out to you so you can look it over and send written comments back to us ahead of the October meeting. <u>Please comment by Wednesday, September 16</u> so we can place copies in the meeting notebooks, and also send them to the CRAB Group Board for their consideration.

Sincerely,

Clarence Pautzke
Executive Director

G:\HELEN\WPFILES\CORR\CRABLTR.798

<u>**DRAFT**</u>

BUSINESS PLAN

PROPOSED BUYBACK OF LICENSES FOR CRAB FISHERIES OF THE BERING SEA/ALEUTIAN ISLANDS

THE C.R.A.B. GROUP

June 5, 1998

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1. EXECUTIVE SUMMARY

The License Limitation Plan ("LLP") adopted by the North Pacific Fishery Management Council ("NPFMC" or "Council") is scheduled to be implemented on January 1, 2000. As configured, there would be approximately 368 Bering Sea and Aleutian Islands ("BSAI") crab vessel licenses issued. For the past four years, the active fleet has been about 235 vessels. Over time, the number of active licenses can be expected to grow, as they are traded and new owners are compelled to show return to investment.

A poll of vessel owners, conducted by the McDowell Group of Juneau, found that more than 90% of vessel owners agree that it is important to reduce the size of the fleet that is presently fishing. This poll was mailed "cold" to the vessel owners and a remarkable 171 responses were returned, of which 58% indicated they would support an industry assessment of between 2% and 3% of gross stock to pay for a license buyback that would accomplish reduction of the fleet.

Based upon this expression of interest, an Alaska non-profit corporation, the Capacity Reduction and Buyback (CRAB) Group, began to work with NMFS, NPFMC, and the industry, in order to design a business plan and an implementation plan that are sensible and well-crafted enough to meet the approval of two-thirds of license holders in a statutorily required referendum.

After a great deal of work, discussion, meetings, and written input, a draft business plan for a proposed industry-funded buyback of licenses has been prepared. This draft is available to the public. Review of the plan by affected license holders is welcomed and encouraged, and comments are solicited. The objective is to devise the best possible plan that will retire the most effort at the least cost in the minimum time. The buyback program itself will represent the best judgment of those seeking to remain in a sustainable fishery, taking into account its manifold risks and opportunities, in the form of a negotiated payment to those leaving the industry.

The buyback will apply to licenses to fish crab in the fishery management plan ("FMP") fisheries of the BSAI. No vessels will be purchased. Only voluntarily submitted bids will be accepted for surrender of licenses in the proposed buyback. The surrender of licenses and the future fishing rights of the vessel in the fisheries of the buyback will be permanent. The offer at bid will be binding and irrevocable, until the auction is concluded.

Funding for the proposed buyback will be obtained through a loan authorized under provisions of the Magnuson - Stevens Fishery Conservation and Management Act (MSA) and title XI of the Merchant Marine Act, 1936 (MMA). The law authorizes loan amounts of up to one hundred million dollars, subject to an amortization period of up to twenty years, an interest rate set at two percent above the treasury cost of borrowing, and assessments of up to 5% of ex vessel revenues in the fisheries to repay the loan.

The proposed buyback business plan provides for a sixty million dollar loan and a 2.5% assessment, except that a lower rate will apply to small boats. Based on the past ten years' experience, the contemplated assessment on the ex vessel income from the fisheries involved in the proposed buyback will generate sufficient revenue to retire the planned loan amount on a 20-year amortization schedule.

The proposed buyback will be a one-time occurrence. This will encourage responsible bidding, discourage unreasonable bids, and provide for an immediate reduction of licenses and an immediate benefit to both the sellers of licenses and the remaining fleet.

The proposed buyback will pay for itself, and return direct benefit to those remaining in the fleet. This will be accomplished through setting a high minimum performance standard - at least ten percent of current actual harvesting capacity must be qualified for purchase at auction, before funding obligations allowing the proposed buyback will proceed.

The proposed buyback will be comprised of two separate auctions, each tailored to a specific sector of the fleet. The amount paid for selected licenses will be the amount bid. The allocation of funds between the two auctions will be adjusted according to actual numbers issued. At the original configuration of 368 licenses, $45 million would be designated for the "A" License auction, and $15 million for the "B" License auction. If the number of licenses originally issued is 290 or fewer, the proposed plan provides the option of eliminating the two-auction approach, and proceeding with a single auction, operated in the "A" auction mode.

The "A" auction is designed to quantify the current harvest capacity that is to be removed, and to assign priority of purchase to the most productive licenses offered at a given price. This is to be accomplished through a reverse, scored- bid, auction. A license holder taking part in the "A" auction will submit his or her lowest acceptable price for sale of the license, together with records of catch and appropriate releases to verify catch figures, etc. The bid tendered will receive a license score based upon the catch records; the more productive the license, the higher the score assigned. The bid amount will be divided by the license score, to assign bid ranking. Thus, the higher the license score, the lower will be the bid rank. "A" Licenses will be purchased beginning with the lowest ranked bids, proceeding until the funds allocated have been spent, provided that the performance standard above (10% minimum of current capacity retired) has been met. The reduction of capacity under the "A" auction will provide the immediate benefit that will pay for the buyback.

The "B" auction is designed to provide opportunity for sale and retirement of licenses without sufficient current catch to obtain competitive scores in the "A" auction. This is to be accomplished through a reverse auction. A license holder taking part in the "B" auction will submit his or her lowest acceptable price for sale of the license. After the "A" auction performance standard has been met, "B" Licenses will be purchased beginning with the lowest bid, and proceeding until the funds allocated have been spent. The "B" Licenses not auctioned will be subject to limitations on use, transferability, and life. This could be accomplished by the NPFMC identifying a category of "interim licenses" that accompany the "B" License category. The reduction of capacity under the "B" auction provides the long-term benefit of stability in the number of licenses, and will benefit the continuing fleet, the fishery resources, and the communities that depend upon them

The target date for implementation of the program is January 1, 2000. A detailed description and analysis of the DRAFT Buyback Business Plan for BSAI FMP crab fisheries follows.

II. INTRODUCTION

The Bering Sea and Aleutian Islands ("BSAI") king and Tanner crab fisheries of the federal exclusive economic zone ("EEZ") are under stress from an excess of capacity in the fishing fleet (see Problem Statement, below). The NPFMC, the Alaska Board of Fisheries ("BOF"), and the Alaska Department of Fish and Game ("ADF&G"), which share management responsibilities for the BSAI king and Tanner crab fisheries, recognize that this overcapacity poses a risk to the recovery and long-term conservation of these depressed resources. Overcapacity presents serious financial challenges to the fishing fleet, which has experienced a 58% decline in gross revenues between 1990 and 1998. The social and economic conditions in fisheries-dependent communities are adversely affected, and the safety of fishermen is threatened. This last point deserves particular emphasis. Due to the "high stakes" race for fish by the excessive numbers of vessels in brief openings, fishing for crab in the Bering Sea has become the most dangerous occupation in the United States, according to federal statistics.[1]

The 1996 Sustainable Fisheries Act ("SFA") amendments to the MSA and to title XI (loan guarantees) of the Merchant Marine Act of 1936 ("MMA") include provisions for the reduction of excess harvesting capacity, through industry-funded buybacks of fishing licenses. The industry-funded buyback is an innovative device designed to accomplish reductions of capacity,

[1]Centers for Disease Control and Prevention, National Insittute for Occupational safety and Health, Division of Safety Research, Alaska Field Station, 4230 University Drive, Grace Hall, Suite 310, Anchorage, Alaska, 99508.

without the failings of programs that are paid for by government. Typically, government-funded buybacks are perceived "corporate welfare" programs that serve as "money pumps" to speculators in fishing licenses and as avenues to incentives and precedents capable of overexpansion.[2]

> Although some producers might prefer that taxpayers pay for all buyback costs, Fee Systems [sic] that help pay for buyback cost may benefit everyone.
>
> Taxpayers will benefit from a Fee System, because they will not have to pay all buyback costs.
>
> Equity suggests that those who will benefit most from buyback should pay most of its cost. Post-buyback producers will benefit most. Buyback should increase post-buyback production and/or decrease its variable cost. It should enable a more stable industrial future for post-buyback producers free from excessive competition.[3]

Owners of vessels that operate in the BSAI king and Tanner crab fisheries were professionally polled in May of 1997.[4] This poll indicated an extremely high interest in reducing capacity in these fisheries, and a widespread willingness to accept an industry fee assessment to that end. (See Elements of the Buyback Business Plan, below.)

There are legal requirements that must be satisfied before such a program can be implemented. Among these, basic limited entry and other conservation mechanisms are already in place for the

---

November 4, 1997.

[2]See World Wildlife Fund report, "Theory and Practice of Fishing Vessel Buyback Programs," John Gates, Dan Holland and Eyjolfur Gudmundsson, 1996.

[3]Staff draft ANPR (Draft ANPR"), Question 1, Website buyback.htm at Kingfish.ssp.nmfs.gov.

[4]The McDowell Group, Juneau, Alaska, "Survey of Vessel Owners for the CRAB Group, Inc. May 1997 (McDowell Group Survey"), revised November 1997.

BSAI king and Tanner crab fisheries, and useful regulatory improvements are in the pipeline.

The BSAI king and Tanner crab fisheries are governed by federal regulations, and by State of Alaska regulations under delegated federal authority, implementing the FMP. These regulatory measures establish guideline harvest levels ("GHLs"), which are enforced by time, area, and species specific closures. In addition, the regulations satisfy conservation-related conditions established by the MSA for a buyback.

FMP modifications to facilitate the buyback have been identified, and they are being considered by the NPFMC. The LLP has been approved by the Secretary of Commerce, and its implementing regulations will be effective prior to the establishment of the buyback. The LLP will provide a more comprehensive and effective limited entry system than exists under the current vessel moratorium, and will serve well as the basis for a mechanism to prevent re-entry of capacity that has been removed by the buyback.[5]

The LLP prohibits the severing of a crab general license from a groundfish general license in those cases of vessels that have both; the CRAB group has specifically asked the NPFMC to proceed with changes to the BSAI crab and groundfish FMPs to allow an exception to be made, solely for purposes of a buyback, and this change is in process. This is the only technical change specifically sought, however, broader language was included in case additional requirement for change surfaced.[6] This approach has been pursued, since the FMP is in state of flux, and changes to the FMP tend to react to the necessity to accommodate changes in management. A condition for such additional changes will reside in, and result from, a successful buyback referendum.[7] The NPFMC is considering changes in qualifying dates for licenses to be issued under the LLP. Additional FMP changes may be needed, depending on the degree of change resulting from this proposed action. (See "A" and "B" License discussion below.)

The owners of vessels affected by the buyback have been identified and have been contacted in preparation for the conduct of a buyback fee referendum.[8] The NPFMC has voted unanimously to request the Secretary of Commerce to work with the CRAB Group to develop a buyback program and related fee system for the BSAI king and Tanner crab fisheries. Information obtained from the poll of vessel owners, public meetings, records in the custody of the ADF&G, the Alaska Commercial Fisheries Entry Commission ("CFEC"), the Commerce Department, and other sources, has been assembled to develop the buyback program and a buyback business plan that:

> ...demonstrate[s], both to producers, and to the Government conservator/lender, that the buyback investment [by those producers] prospectively enables a post-buyback return sufficient to justify the investment and repay the...loan [under title XI of the MMA for

[5]See MSA, section 312(b)(1)(B)(i).
[6]Fishery Management Plan Amendment Proposal", August 14, 1997.
[7]Draft Environmental Assessment/Regulatory Impact Review for Amendment 7 to the Fishery Management Plan for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands to 1) Revise definitions of Overfishing, MSY, and OY; 2) Update the BSAI Crab FMP; NPFMC,ADF&G,NMFS,UAF; March 1998, in particular note discussion at pg. 16, section 1.5, "List of housekeeping changes to Crab FMP.
[8]See MSA, section 312(d)(1)(A)

the purchase of excess licenses]....[9]

The requirement of sufficient return produces a necessity to remove enough actual, current capacity to justify program costs to the industry, and to prevent increased future effort, including that which would result from re-entry of licenses that have not been consistently used in the BSAI king and Tanner drab fisheries in recent years. Accordingly, the program is structured to provide for:

(1) A reduction of actual, current fishing capacity, through a scored-bid reverse auction; and

(2) a separate offer for licenses which do not reflect recent continuity of participation in, and dependence on, those fisheries, and the imposition of constraints on the use, transfer, and life of such licenses. The offer at (2) is structured to allow license holders who have little recent fishing history the option of selling their licenses, since the offer at (1) provides very little possibility of selling such licenses. The constraint indicated at (2) above is justified primarily by the fact that the holders of "A" Licenses remaining in the fisheries after the buyback have been, and will continue to be, more dependent upon those fisheries than have been, or will be, the holders of "B" Licenses.

[9] Draft ANPR, Question 5.

III. PROBLEM STATEMENT

The BSAI king and Tanner crab fisheries have become overcapitalized to the extent that recovery and long-term conservation are threatened. The buyback is necessary to prevent overfishing, rebuild crab stocks, and otherwise to achieve measurable and significant improvements in the conservation and management of the BSAI king and Tanner crab fisheries.[10]

The moratorium on entry of new participants to the fishery allowed 759 vessels to participate.[11] As further discussed below, the LLP as presently configured, will allow 368 vessels to participate (exclusive of the restricted licenses for the separately managed Norton Sound fishery).[12] The number of licenses to be issued for BSAI crab vessels has not yet been finally resolved. The Council has scheduled "final action" on a recent participation requirement for licenses to occur at the October 1998 meeting.[13] Even the most restrictive option in this lowered participation would allow far greater effort than the fisheries will support on a sustainable basis. However, the pending NPFMC action could considerably reduce the number of licenses issued under the LLP, and thus improve the performance of the buyback.

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[10]See MSA, section 312(b)(1)(A).
[11]50 CFR Parts 671, 672, 675, 677. See 60 F.R. 40763-40775, August 10, 1995.
[12]See 62 F.R. 43865, August 15, 1997; also Supplemental Analysis of Final License Limitation Alternative for the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska and the King and Tanner Crab Fisheries of the Bering Sea/Aleutian Islands ("LLP Analysis"), May 27, 1997, Table 3.9, page 63.
[13]North Pacific Fishery Management Council Newsletter, February 13, 1998, page 7. See also C-6(b) Supplemental: Discussion Paper on Suggested Changes to the License Limitation Plan, NPFMC Staff, February, 1998.

The Bristol Bay red king crab stocks, for example, are at a historically low level of abundance, and are being managed for rebuilding. Despite this restrictive management, the fishery exceeded its 1996 GHL of five million pounds by more than three million pounds. The ADF&G, which manages the fishery, testified to the BOF in August, 1997, that the fishery was unmanageable at the 1996 level of participation, when 196 vessels fished. The BOF responded with new regulations, severely restricting the number of pots each vessel may use (50% reduction), removing any requirement for advance notice of closure of the fishery, and declaring that, during seasons in which more than 250 vessels register, the in-season management of the fishery would be extremely difficult, and therefore, the number of hours for the fishery could be set in advance.

Each of the affected fisheries - the Bristol Bay king crab, Bering Sea Tanner crab and Bering Sea and Aleutian Islands king crab fisheries - exhibits the effects of overcapacity: Resource declines leading to episodic, ineffective and costly fishery closures and unsustainable harvests; lost revenues to the increasingly hard-pressed fleet and local communities; and aggravated threats to the safety of fishermen. **The objective of the buyback is the maximum sustained reduction in fishing capacity in these fisheries, at the least cost, in the minimum of time.**[14] This is to be accomplished through purchasing and permanently retiring licenses that will be issued under the LLP. Fees on those who remain in the fishery after the buyback of licenses is completed will repay a title XI, MMA loan provided for the purchase of excess licenses.

[14] See MSA, section 312(b)(2).

IV. BUYBACK PROGRAM MODEL

1. The buyback program will purchase licenses that will be issued under the LLP for the BSAI king and Tanner crab FMP fisheries.

2. All licenses purchased under the buyback program will be voluntarily surrendered by the legal holders, and will be permanently retired by the Secretary of Commerce, in accordance with provisions of the MSA and applicable regulations.[15]

3. Funding for the buyback will be $60 million, to be provided by loan under section 1111, title XI, MMA.[16] By law, assessments to repay the loan may not exceed 5% of the annual ex vessel value of the total landings.[17]

4. For purposes of the buyback, LLP licenses will be divided into categories, "A" and "B."

"A" Licenses are those which have at least one legal landing in any of the LLP king or Tanner crab fisheries during the period between the end of the LLP EQP, and the date the Council voted to request development of a buyback plan by the Secretary of Commerce, that is, between December 31, 1994, and September 29, 1997, the Participation and Dependence Period ("PDP"). CRAB estimates that the maximum number of "A" Licenses allowed under any of the NPFMC LLP alternatives is 278, based upon CFEC data.[18]

"B" Licenses will be those with respect to which there was no participation in the fisheries during the PDP. By amendment to the LLP, these licenses will be restricted in a manner that will allow their use only to the extent that they will not erode the conservation and economic benefits achieved by the buyback. Restrictions will include non-transferability, a prohibition on use in any BSAI king or Tanner crab opening for which more than 200 vessels are registered to participate, and an expiration date to coincide with the completed repayment of the buyback loan. CRAB estimates that the maximum number of "B" licenses allowed under any of

[15] See MSA, section 312(b)(3).
[16] See MMA, section 111(b)(3). See Table 7.
[17] See MSA, section 312(d)(2)(B).
[18] See Vessels Ranked by Number of Seasons Registration, CRAB Draft Worksheet, May 20, 1997 ("Vessels Worksheet"), attached.

the NPFMC LLP alternatives is 90.

5. The allocation of funds between the "A" and "B" License buyback auctions is related to the relative numbers of licenses that fall within each category. After the NPFMC final action on revisions to the LLP in October 1998[19], funds could be scheduled as follows:

BSAI LLP licenses	Buyback funding, million $	(See discussion at note 19)
	Total funds	60
Total licenses	"A" License	"B" License
368	45	15
360	46	14
340	49	11
320	52	8
300	56	4
280	60	0
260	60	0
240	60	0

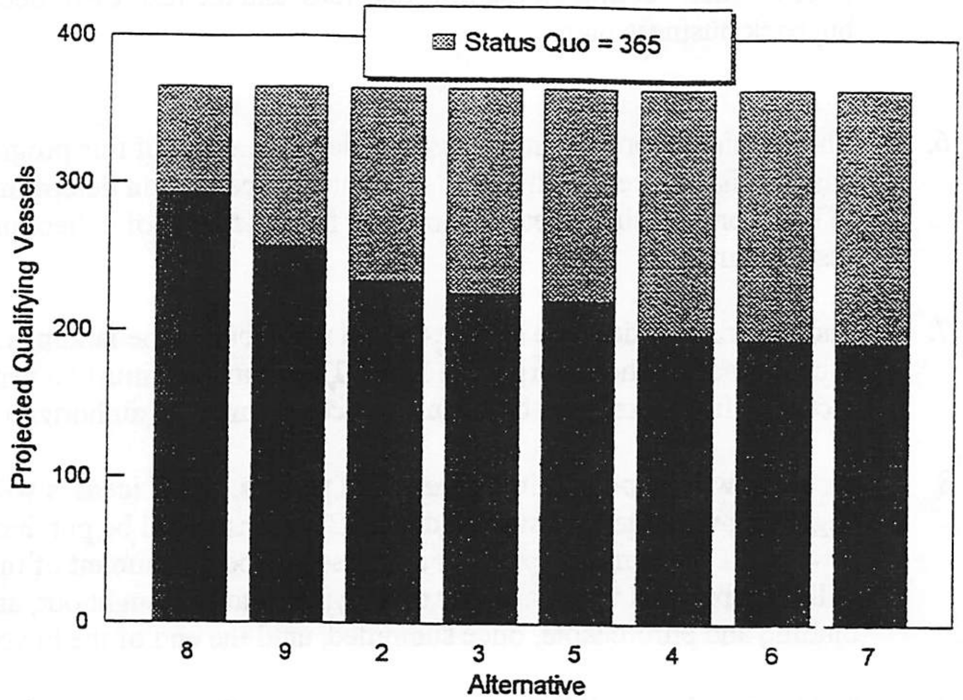
[19] See Chart A, below: Draft for Public Review, Analysis of Proposed License Limitation Amendment Package, NPFMC, May 28, 1998.

CHART A

LLP Amendment - Proposed Action 5: Crab Recent Participation Requirement

CHART A

Lowering the Heat on the Resource



Alternatives Ranked in Terms of Numbers of Vessels Projected

Minimum Criterion		Alternative	Projected Qualifying Vessels
None:	Status Quo	1	365
One:	1996 or 1997 or 1998	8	293
Any 2:	1995 or 1996 or 1997 or 1998	9	257
Both:	1995&1996	2	234
Both:	1996 & 1997	3	226
All 3:	1995 &1996&1997	5	221
Both:	1997 & 1998	4	198
All 3:	1996 & 1997 & 1998	6	195
All 4:	1995&1996&1997&1998	7	193

Data from: Draft for Public Review, Analysis of Proposed License Limitation Package
Prepared for: North Pacific Fishery Management Council
Prepared by: Northern Economics, Inc.
Pursuant to: NPFMC Contract 98-6 May 28, 1998

For the case in which fewer than 280 initial licenses are issued, no "B" License category will exist. For the case in which 280 to 290 initial licenses are issued, no "B" License category will exist provided a two-thirds majority of those who would otherwise receive "B" Licenses, when polled, indicates this preference. This poll will be taken immediately after Council action on the LLP revisions, and the result will become fixed in the buyback business plan.

6. The official record of catches used in determinations of this program will be the State of Alaska Fish Ticket. Fish Ticket amounts will be used in determining the weights applied to bid scores; Fish Ticket amounts will form the basis of collection of percentage assessments.

7. Each license holder who chooses to bid will tabulate the landings made by the vessel for each buyback fishery during the PDP. These landings must be verified by officially recorded fish ticket, and bids must be accompanied by authorization to verify records.

8. Licenses will be bought in a reverse bid process. "A" Licenses will be purchased beginning with the lowest scored bid, "B" Licenses will be purchased beginning with the lowest bid. The amount paid for a license will be the amount of the successful bid. Bids will be submitted voluntarily by those wishing to be bought out, and will be legally binding and enforceable, once submitted, until the end of the buyback process.

9. "A" License bids will be given a score, which will derive from the productivity of the license. The score number will be a decimal fraction derived from the recorded live landing weights for BSAI king and Tanner crab of the vessels of license holders submitting bids and standard industry data as detailed in the section "BUYBACK PROGRAM MODEL ARTICULATION", below. The principle of the bid scoring is that more productive licenses will be accorded greater preference in the reverse auction of "A" Licenses.

   "B" License bids will not be given a score, because "B" Licenses were by definition inactive during the PDP, and thus would not score well during the PDP, and be disadvantaged in bidding. The results of the McDowell Group Survey indicate a greater willingness to sell, and a lower valuation for BSAI king and Tanner crab licenses by owners of licenses that will fall within this category. The "B" category represents an opportunity for willing sellers to sell, and the buyback to buy, licenses which could not qualify for retirement under the "A" License buyback auction.

10. No buyback will proceed unless at least 10% of productive effort for the PDP has been

offered in bids, which in total do not exceed the amount of funds designated for the buyback.

11. After conclusion of the purchase and permanent retirement of licenses, all remaining holders of licenses will be assessed fees to pay for the loan over a twenty year period.[20]

    The average assessment, based on the past ten years' performance, will be 2.5% of the ex-vessel value of each landing made under the license; except that, for vessels less than 60 feet LOA, the assessment will be one-half of the rate for the larger vessels.[21]

12. No transfer, renewal or retirement of a license, may be accomplished unless all assessments are brought current. Any license, "A" or "B", which has failed to pay an assessment for three or four years is said to be "Latent" and will be listed as such, in the records of the program and by the Secretary of Commerce. A license which has failed to pay assessments for five years shall have its listing changed to "Dormant" and after the end of the fifth year, that is when the assessments are due for the sixth year, all rights under the license shall be retired, and the license shall cease to exist, just as if it had been purchased under the program.

[20]See MMA, section 1111(b)(4).

[21]See Table 7. See also the LLP Analysis, pp 63-65. Of the 427 licenses listed, 59 are for Norton Sound only, and will not be included in the buyback, as they are not qualified to fish in the remaining LLP BSAI king and Tanner crab fisheries. Of the 368 vessels remaining, 90 are estimated to fall into the "B" category, and 278 in the "A" category. Of these, fourteen vessels under 60 feet LOA are qualified for those fisheries, and would be included in the buyback. Of those 14, there are 8-10 that are qualified only for the Pribilof Islands king crab fishery, under an LLP exemption from the general qualifying period, that are also in the "A" license category.

V. BUYBACK PROGRAM MODEL ARTICULATION

The State of Alaska collects fees from landings of crab and other commercially caught species. Individual vessel landings are recorded on the Alaska Fish Ticket. This legal document establishes price, quantity of catch delivered, waste (deadloss), areas and dates and numbers of pots fished, permit number, and vessel operator, by vessel, season and species. The data is confidential within the CFEC, and abstracted for reporting to the fishery managers as well as the Department of Revenue and other agencies. In order to participate in the reverse-bid auction, applicants will be required to waive confidentiality to verify information on fish ticket records.[22]

In 1987, a Regional Information Report Series was established, in which annual data is reported to the Alaska Board of Fisheries, for use in management decisions affecting the various fisheries. (Please see discussion below for a description of the role of various agencies in the management process.) Limited data for some fisheries are available back to the inception of Alaska Statehood (note, Adak red king crab catch for 1960 is listed as 2,074,000 lbs. on page 161 of the March 1991 report). The fisheries of concern to the CRAB buyback are covered by the Westward Region Shellfish Reports to the Alaska Board of Fisheries, Division of Commercial Fisheries, Westward Regional Office, 211 Mission Road, Kodiak, Alaska, 99615. Data are

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These vessels have less stake in the program, and are included at lower cost for this reason.
22. Memorandum to Dr. Schelle, CFEC; from Peggy Murphy, Crab Plan Team, Commercial Management and Development Division, ADF&G, February 26, 1998; subject, definition of vessel length - in particular the first paragraph, which deals with status of record databases.
22

usually available *in provisional form* immediately at the closure of the fishery they track, however, formal review and publication of data may take two years. This is true in particular for the Western Aleutian (formerly Adak) area brown king crab fishery, which was open for 365 days in 1996-97. On March 18, 1998, catch information was received for the Aleutian brown king crab fishery by telephone from the westward fisheries biologist for ADF&G in Dutch Harbor, and incorporated it into the tables in this document. The information will be published in the June 1998 report.

At the time of the buyback, then, the most recently available data which have been published, or tabulated within official news releases of the ADF&G, will be compiled for the fisheries data used to determine the following **general buyback factors:**

- Total live weight landed ("**lw**") for each separate fishery (species and year) during the PDP,
- Derived value [price /pound, ("**$**")] of each separate fishery within the PDP,
- Number of vessels ("**n**"), that registered for each separate fishery during the PDP,
- Value by Fishery ("**Vt**") [thus, **Vt** = (**tw** * **$**)],
- Vessel average value ("**Va**") for each separate fishery during the PDP [thus, **Va** = **Vt** /**n**],
- Value Total ("**VT**") is the sum of all **Vt**, for all fisheries falling within the PDP,
- Value Index ("**VI**") is the sum of all **Va**, for all fisheries falling within the PDP,

- Coefficient of effort, ("C_E") is constant for the PDP [thus, $C_E = (100/(VI*VT))$].

The use of the derived value figure (\$) provides uniformity throughout the bidding process, and eliminates the need to produce difficult to verify documentation of price adjustments made after a landing was recorded.[23]

Each vessel license holder choosing to bid will tabulate the landings made under the vessel license for each buyback fishery within the PDP. Bids must be accompanied by authorization to verify records. These landings must be verified by officially recorded fish ticket, and the verified records and the applicable buyback factors, above, will be used to determine the **vessel license buyback factors:**

- Bid amount ("**BA**") is the amount at which the license holder offers the vessel license, and is the amount received by a successful bidder upon retirement of the vessel license,
- Weight of live landings ("**lw**") of the vessel license, as recorded on fish tickets for each separate fishery within the PDP.
- License basis ("**Lb**") value for each separate fishery within the PDP [thus, **Lb** = (**lw** * **\$**)],
- Vessel License Index ("**VLI**") value is the sum of all **Lb** within the PDP, for each bidding vessel license,
- License Score ("**LS**") number for each vessel license, for all fisheries within the PDP, is a four place decimal [thus, **LS** = **VLI / VI**],
- License fishing Effort ("**LE**") number for each vessel license, expressed as a percentage,

is income share garnered under that license (in standard terms) within the PDP

[thus, **LE** = **LS** * $\mathbf{C_E}$],

- License Bid Rank ("**LBR**") for each participating "A" License vessel

  [thus, **LBR** = (**BA / LS**)].

Note that the more productive the vessel license has been during the PDP, the higher the License Score will be. The higher the License Score, the lower the License Bid Rank (since LBR = BA/LS). The purchase of licenses will begin at the lowest License Bid Rank number and proceed upward.

A Buyback Table may be prepared, beginning with the qualifying bid of the vessel with the lowest LBR, and continuing in ascending order of **LBR** until all qualifying "A" License bids have been listed; with columns for "Vessel Name", "License Bid Rank" (**LBR**), "Bid Amount", "Total of Bids", "License Score" (**LS**), "License Effort (**LE**)", and "Total Effort". Let figures appearing in the totals columns be running totals, consisting of the sum of all previously ranked bids and that of the Vessel appearing on that row of the table, and the sum of all previously listed **LE** and the **LE** of the Vessel appearing on that row of the table. Licenses selected for buyback will be the licenses of the vessels first appearing in the Table, continuing downward in the table until the total amount allocated to the "A" License buyback, in (5) of buyback model, above, is reached in the column labeled "Total of Bids". If the amount appearing in the corresponding entry of the "Total Effort" column is equal to or greater than the amount (10%) required in (10)

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[23] See DISCUSSION below, and Tables 1 through 6, for a presentation of data compiled from Reports to the Industry.

of buyback model, above, 10%, the buyback may proceed.

VI. ELEMENTS OF THE BUYBACK BUSINESS PLAN

The following determinations are from section 312 of the MSA and section 1111 of the MMA.

- Determine the fees most likely necessary to amortize the loan, the percentage of post-buyback gross revenue this would most likely represent, and whether post-buyback producers could afford this.

This question is paramount in the determination of the value of the program to producers who will pay for it. It is most helpful to determine the known quantities first, then to move progressively toward the determination of less well quantified factors. In subsequent discussion, we utilize historic income figures, the results of polling of the industry and information developed in the course of extensive public meetings. The approach taken is first to set a limit on the total cost of the program; this cost was derived from interpolation of the polling results.

The ten-year average value of the BSAI king and Tanner crab fisheries, for 1986/1987 through 1995/1996, was $244.6 million[24]. Polling of the affected industry shows that 58% of vessel owners that indicated a preference (7% indicated "don't know") would support an assessment of 2% or more, while a 3% or greater assessment garnered only a 31% approval rating.[25] **A well-crafted program can then probably count on the support of the affected fleet at a 2.5% average assessment level. This assessment level is estimated to yield an annual average**

[24] ADF&G, developed for observer plan cost projections.

payment amount, based upon the ten most recent years of available data, of $6.11 million. At current rates, an annual payment of $6.0 million, less than the amount available for payments at 2.5% assessment, will amortize a debt of $60 million in 20 years. In the 1995/1996 season, the fleet earned only $131.6 million, the lowest income in ten years. An annual payment of $6.0 million would have required an assessment of 4.6% in that season. A conservative approach to the program financing is indicated, and any higher principle amount should be considered carefully.[26]

Income is projected for the 20 years of the buyback program in Chart B. This projection posits changes in the gross revenue of the fleet that are analogous to those experienced in the past ten years. It does not take factors of inflation, nor of population growth into account. Both of these long-term factors should act to increase price for resources that are conservatively managed, even at moderately increased supplies. This level-dollar analysis is warranted, because expense items are expected to follow similar trends, as well. There is no disaster of the magnitude of that experienced in 1983-85 projected, because management of stocks is more precautionary, fishery exploitation is more diversified (the brown king crab and opilio crab fisheries became fully developed after 1983), and the restraint on capitalization brought about through the combined LLP and buyback will help curtail the major impetus of over-exploitation.

[25]The McDowell Group, Juneau. "Survey of Vessel Owners for the CRAB Group, Inc. May, 1997.
[26]See Table 7.

BSAI FMP CRAB FLEET LICENSE BUYBACK PLAN REVENUE PROJECTION *see text							
		Obligation terms:	Int. rate	Annual Payment	Term (years)	Principal Amount	
			0.07675	5,964,083	20	60,000,000	
YEAR	REVENUE projected	RATE CALCULATED	RATE ASSESSED	ANNUAL PAYMENT	ANNUAL INTEREST	PRINCIPAL BAL.	RESERVES
1	165,000,000	3.615%	3.615%	5,964,083	4,605,000	60,000,000	0
2	225,000,000	2.651%	2.651%	5,964,083	4,500,690	58,640,917	0
3	290,000,000	2.057%	2.500%	5,964,083	4,388,375	57,177,524	1,285,917
4	325,000,000	1.835%	2.500%	5,964,083	4,267,439	55,601,815	3,446,833
5	225,000,000	2.651%	2.651%	5,964,083	4,137,222	53,905,171	3,446,833
6	200,000,000	2.982%	2.982%	5,964,083	3,997,010	52,078,310	3,446,833
7	185,000,000	3.224%	3.224%	5,964,083	3,846,037	50,111,237	3,446,833
8	155,000,000	3.848%	3.848%	5,964,083	3,683,477	47,993,191	3,446,833
9	145,000,000	4.113%	4.113%	5,964,083	3,508,441	45,712,585	3,446,833
10	220,000,000	2.711%	2.711%	5,964,083	3,319,970	43,256,942	3,446,833
11	235,000,000	2.538%	2.538%	5,964,083	3,117,035	40,612,829	3,446,833
12	300,000,000	1.988%	2.500%	5,964,083	2,898,524	37,765,780	4,982,750
13	280,000,000	2.130%	2.481%	5,964,083	2,663,242	34,700,221	5,964,083
14	290,000,000	2.057%	2.057%	5,964,083	2,409,902	31,399,379	5,964,083
15	325,000,000	1.835%	1.835%	5,964,083	2,137,119	27,845,198	5,964,083
16	280,000,000	2.130%	2.130%	5,964,083	1,843,399	24,018,234	5,964,083
17	260,000,000	2.294%	2.294%	5,964,083	1,527,137	19,897,550	5,964,083
18	275,000,000	2.169%	2.169%	5,964,083	1,186,601	15,460,603	5,964,083
19	250,000,000	2.386%	2.386%	5,964,083	819,930	10,683,121	5,964,083
20	240,000,000	2.485%	0.000%	5,964,083	425,116	5,538,968	0
					(0)	(0)	(0)
	243,500,000	Average annual revenue of fleet over the life of the obligation					

CHART B

In the above projection, 11 years occur in which the cost of the program to the participants represents less than 2.5% of income. It is suggested that these years be assessed at a 2.5% rate, and the surplus reserved to mitigate the potential effects of disastrously low income years (such as occurred in 1984) by lowering assessments in any such year. Reserves generated in this fashion should not exceed one annual payment; dividends from investments of the surplus account should be retained by the account, so that the possibility of growth of principal is allowed. This will mitigate the impact of the assessment system on the financial viability of the fleet.

- Determine how buyback affects the economics of post-buyback production.

Stipulation of removal of no less than 10% of actual, current capacity, in order to proceed with a buyback, guarantees that the program will at least pay for itself, since in the worst case, fees may not be assessed at greater than 5% of the gross revenues of the fleet. As noted, above, the MSA provides that fees may not be assessed at greater than 5% of the total ex-vessel annual revenues of the affected fishery. The above analysis indicates that an immediate (one year) reduction of actual current capacity in the vicinity of 10% is feasible. The proposed buyback is tailored to cost 2.5 % of anticipated, post-buyback fleet revenues, based on average income for the past ten years. However, the benefits would be greater than this assumption would indicate.

(See Table 8 for examination of the potential benefits.) On average, 244 vessels participated in the largest fishery for each of the years 1986/1987 - 1995/1996.[27] Recall that participation after the NPFMC decision does not qualify for "A" Licenses, as that participation was presumably speculative in nature and, in many cases, did not reflect continuity of participation, and thereby, dependence on the fisheries.

The number of licenses, and the number of endorsements for a given fishery, are different quantities.[28] The distribution of license endorsements across a given fishery is not capable of analysis in advance of the buyback results. This resolves itself in the intricacies of the LLP, where "general licenses" serve as the necessary substrate for fisheries participation, which is only granted for a specific fishery through the additional possession of specific non-severable endorsements. This, in turn, establishes a character of uniqueness deriving from the full suite of fishery endorsements earned under a given vessel's operations during the LLP EQP. However it is likely that a total fleet of 244 "A" License vessels would not produce more than 225 licenses with endorsements in any one fishery, since the "bid ranking" process described in the plan heavily favors removal of licenses with multiple endorsements.

A buyback that had achieved an average fleet size for those ten years of 225 vessels in the largest fishery would have accomplished a three-fold return on investment.

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[27]see Table 7.

[28]See: Supplemental Analysis of Final License Limitation Alternative for the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska and the King and Tanner Crab Fisheries of the

The redistribution of income to individual vessels made available by the buyback will presumably occur in the proportion of the shares that presently exist. That is, the redistribution has neutral effect on the success of those prosecuting the fishery, relative to one another. This allows each vessel owner to calculate the potential benefit of the program as a net of the fee 2.5% to 15% increase in gross revenues.[29]

Whether future returns will achieve those that would have occurred in the past is, of course unknowable in the present. Factors which affect this include: Changes in costs and taxes; changes in the supply of product from other producers (such as Russia and Canada), which reach world markets; changes in the relative strength of the Japanese and U.S. economies, the two major markets; development of new markets in the emerging economy of China, and elsewhere; and of course, the condition of the resource in the Bering Sea and Aleutians, which depends upon management and exploitation of the stocks, as well as unmanageable factors, such as climate. The play of these factors produces risks familiar to all those in the industry. **The buyback program itself represents the best judgment of those seeking to remain in a sustainable fishery, in the form of a negotiated payment to those leaving the industry, taking into account its manifold risks and opportunities.**

Bering Sea/Aleutian Islands ("LLP Analysis"), May 27, 1997, Table 3.10, page 65.
[29]See Table 8. This Table examines three scenarios: Column 1, the case that existed in history with 244 vessels on average and historic revenues used to project an average vessel net benefit; Column 2, the case that will exist after the LLP, as originally configured, takes effect, with 278 vessel licenses and an average historic revenue; Column 3, the worst case analysis, in which the lowest annual income for the past 10 years

There are eight fisheries which are managed separately under a single FMP and are to be included in the LLP and in the CRAB buyback plan. The eight fisheries will require a general license, as well as one of six fishery endorsements, to fish under the LLP. These eight fisheries are:

* * Bairdi Tanner Crab
* * Opilio Tanner (Snow) Crab
* St. Matthews Island Blue King Crab
* Pribilof Island Blue and Red King Crab
* Bristol Bay Red King Crab
* Adak Red King Crab
* ** Western Aleutian Brown King Crab
* ** Eastern Aleutian Brown King Crab

The (**) Aleutian Brown King Crab fisheries listed (formerly Adak and Dutch Harbor districts) have had a redefinition of district (now East of 174West Longitude. and West of 174West Longitude), and catch data after 1995 is differently handled; one endorsement will be required for participation under the LLP - in the event, the data presentation will vary, the participation level in the buyback will not. The (*) bairdi and opilio crab fisheries are managed as separate species, with separate time and area closures and size regulations, but with only one LLP endorsement required to fish them. Each of the remaining fisheries requires a separate endorsement to fish.

Management tools currently in use include gear restrictions, size and sex restrictions, time and

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($126.5 million in 1995/1996) is taken to be the average income for the period in consideration.

area closures and guideline harvest levels that are determined by stock assessment as well as results encountered during fishing. Precautionary management protocols, as required by the SFA amendments to the MSA, are being incorporated into the BSAI crab FMP and are scheduled for final action by the Council during the week of June 8. 1998.[30]

These eight fisheries have experienced different levels of effort, historically, and in a number of cases have had closures for one or more years, for reasons of conservation. Catch, by fishery, is given in Table 1, for the years 1976 through 1997. The opilio crab fishery first reached full exploitation by U.S. vessels in 1986. The ten-year basis of the analysis proceeds from the fact that the initiation of the complete suite of fisheries that will be covered under the buyback developed only at that time, despite the longer history (back to post World War II) of U.S. red king crab fishing. The data presented in Table 1 show the considerable flux in catch that occurs; Table 2 illustrates the prices that occurred and Table 5 shows the income that resulted at the various harvest levels. Please note that fluctuations in catch include an increase in both Bristol Bay red crab and opilio harvest for each of 1996 and 1997 over the previous years. This trend is expected by fishery managers to continue into the 1999 season, and they anticipate that a decline in the opilio fishery may follow after that.[31]

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[30]For examples of this evolution, please refer to: Summary of Bering Sea Aleutian Islands King and Tanner Crab Fishery Management Plan (*revised 2/14/94), NPFMC staff; Information on Revisions to the BSAI Crab FMP January 6, 1998 through February 27, 1998, Complied 2/27/98 for the Crab Plan Team meeting 3/5-6/98 and E1.3, Crab FMP, Crab Species Profiles: 1998, D. Witherill, NPFMC staff, March 1998.) Draft EA/RIR for Amendment 7, May 6, 1998, MSY, OY, overfishing, Update FMP (attached).

[31]See: Report to the Industry on the 1997 Eastern Bering Sea Crab Survey, ASFC, NMFS, 2/98[afsc 98-02]; Status of King Crab Stocks in the Eastern Bering Sea in 1997, Zheng, Kruse and Murphey, ADF&G, 8/11/97;

The Crab Plan Team, a working committee of scientists from NMFS, ADF&G, University of Alaska-Fairbanks ("UAF"), and NPFMC staff, is now at work revising the BSAI crab FMP to assure it conforms with the objectives of the MSA, as amended by the SFA, particularly with regard to overfishing definitions and stock rebuilding provisions. They expect to have completed the work by the October 1998 due date. They are building on a foundation of actions taken to rebuild stocks of king crab after the populations crashed in the early 1980s. In 1996, Jie Zheng, Margaret (Peggy) Murphy and Gordon Kruse, of ADF&G, completed work on a new model of king crab recruitment, called the Length Based Analysis ("LBA"), which was adopted by the BOF, as a rebuilding strategy for the Bristol Bay stocks. This model not only improves the methodology of cohort analysis, it also quantifies the benefits of a lower exploitation rate for purposes of rebuilding of stocks.[32] The LBA methodology is being adapted as a strategy for management of Tanner crab stocks, as well. By present standards, the exploitation rate of king crab utilized in earlier decades was excessive.

In addition to this management action, the NPFMC has taken various actions, including establishment of relatively stringent caps on observed bycatch for trawl fisheries (to protect crab stocks) and no-trawl zones, designed to protect habitat necessary to stocks of crab, as well

Crab is Back, Fiona Robinson, Seafood Business magazine, March/April 1998.

[32]See Overview of Population Estimation Methods and Recommended Harvest Strategy for Red King Crabs in Bristol Bay, Zheng, et al, ADF&G, 2/22/96.

as the stocks themselves.[33] There has been participation by fishermen and members of industry in accomplishing all of these steps.

In short, there is a very strong commitment to conservation in this area and, therefore, there is an expectation that stocks will be healthy in the long run. It is clear that the primary threat to the long-term health of crab stocks is the overcapacity of the fleet that fishes them. The business plan, as a means to reduce that capacity, is offered as another, essential step in the series of efforts taken to promote the long-term health of the stocks.

- Determine the best way to buy back the most capacity at the least cost, and in the shortest time.

The measure of "capacity" is crucial to achievement of this goal. In the case of BSAI crab FMP fisheries, there are two relevant factors: Actual capacity, as demonstrated in the ability of fishing license holders to catch fish, relative to the remainder of the current fleet, and potential capacity, as represented in the numbers of vessels eligible to operate in the fisheries, and as represented in parameters of vessels licensed to participate (length and lading are by far the most important in crab fisheries).

[33] See: Bering Sea Species Protection Areas, NPFMC chart; Summary of 1996 NPFMC Actions to Conserve Crab, D. Witherill, 12/17/96; Memorandum for Agenda C-4, BSAI Opilio PSC Caps, NPFMC final action,

Actual capacity is very well documented in the fish landing records of the various producers. Production relative to other fishing operations is simply taken with respect to "average" productivity. Catch records for individual operators as well as data sufficient to generate average productivity, are maintained by the CFEC. The buyback model specifies "effort" in terms of standardized values generated, rather than weights landed. This smooths the very large differences between fisheries, some of which take place on relatively high valued stocks, at low volumes, while others are the contrary, low valued and high volume, and acts to make buyback opportunities available in an equitable fashion.

The most significant factor in the reduction of potential capacity, is in establishment of an effective program of limited entry. The LLP for BSAI crab offers a basic structure for such a program, by establishing certain restrictions. The buyback provides for reduced capacity that is eligible to operate under LLP restrictions. It is noted, however, that those restrictions will need to be refined to facilitate the buyback.

The total of funds available to the buyback is set by the dictates of affordability or by the limit set by the MMA (the latter being $100 million).[34] The value of licenses, as defined in the market resulting from the buyback, is diminished as more licenses are added to the total. One result of the vessel owner poll is very much in line with intuition. Vessel owners with strong dependence on the BSAI king and Tanner crab fisheries valued the pending licenses much higher than those

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12/96; and Letter to Richard B. Lauber, from Steven Pennoyer, November 26, 1996.

lacking such dependence. The establishment of two categories of license, "A" and "B", with the distinction between categories drawn on basis of dependence on the fisheries, has the prospect of providing a fair, reasonable, and widely supportable basis for a buyback that will effectively serve economic and conservation objectives.

Potential capacity of the present fleet has been the subject of a number of regulatory provisions designed to curb increases. Examples include an LLP prohibition of increases in vessel length beyond 20% for vessels less than 125 feet LOA, and no increase for vessels more than 125 feet LOA; and restrictions on the number of pots vessels are allowed to fish.

Where fishing vessels and operations are subject to restrictions, those aspects which are less restricted or unrestricted tend to attract additional capital investment or labor, particularly where capacity already exceeds optimum yield. For example, if engine power is not restricted, vessel owners will invest money in this area, if it offers a potential, competitive advantage in short duration fisheries. This "input stuffing", which tends to challenge conservation and decrease margins of profit, has been encouraged by certain government programs, such as the Capital Construction Fund ("CCF"). These programs are currently under review, and will likely be objects of reform. CCF could serve to help reduce the problem of overcapitalized fisheries by providing a controlled egress for capital from the fisheries, rather than trapping capital and discouraging its exit through severe penalties. Allowing qualified withdrawals of funds

[34] MMA, section 1111(b)(3).

deposited after selling licenses in a buyback, for instance, for carefully structured options that direct the flow away from fishing investment, such as IRAs, and as a bridge to certain types of 1031 exchange or other tax-deferred instrument, would provide a use for CCF that helps to reduce capacity. Since CCF rules require approval for qualified withdrawal, a redefined CCF program affords an opportunity to set policy in disinvestment that otherwise will not occur. The buyback program will help to shape the direction of such reform, when the program utilizes MMA funding to help reduce capacity in the fisheries.

It appears that the best way to buy back the most actual BSAI king and Tanner crab fishing capacity, at the least cost, and in the least time, is to conduct a scored reverse auction (lowest bid is successful), with bid scoring based on actual, recorded production. The auction process for these "A" Licenses is to be structured as a one-time occurrence, to minimize unreasonable bids. This process will include a ceiling on funding ($45 million to $60 million depending on amounts expended in the "B" portion of the program) and a threshold of performance (no less than 10% of current actual capacity must be committed for buyback to qualify the program). **The best way to buy back the most potential BSAI king and Tanner crab fishing capacity at the least cost and in the least time, is to establish a restricted class of license and to divide funds in a reverse auction between those wishing to participate.**

- Determine the capacity likely to be bought back at the projected cost.

The process of the reverse auction makes it difficult to answer this question definitively in advance. When licenses are issued under the LLP, it can be expected that there will be some transfer of value from vessels to licenses. It is only to the extent that the package, vessel plus license, exceeds the value of the vessel (and prospective rights) prior to the issuance of licenses, that value has been added. This value depends on the perception of health of the resource and the industry, and becomes a measure of confidence in the program. Initially, the extent of dependence on the fisheries is the primary factor in high valuation of licenses.

The following discussion of buyback program cost estimates relies on the McDowell Group survey of owners of Bering Sea/Aleutian Islands crab fishing vessels.[35] The survey contacted all of the potential participants in a referendum on an industry fee system for the buyback. Responses were received from the representatives of 171 vessel owners, which translates to 47.8% of the total participation in a referendum. Over 70% of the respondents participated in the BSAI king or Tanner crab fisheries in 1995, 1996, or 1997.

<u>"A" Licenses (278)</u>

Of those respondents to the McDowell Group survey indicating that a fair price for their entire package of BSAI king and Tanner crab LLP licenses would be worth $1 million or more (38% of those polled), 56% earned 25% to 50%, and 40% earned greater than 75%, of their income from these fisheries. Of the respondents valuing licenses at that level, 40% said they were not likely to sell, and 29% said they were likely to sell. Thus 96% of those valuing their licenses at $1 million or more represent actual effort in the fisheries, and nearly 1/3 of these are willing to sell their licenses. **There is a high likelihood that 17% of current actual capacity can be acquired for less than $45 million. That eliminates 47 of the 278 "A" Licenses from the BSAI king and Tanner crab fisheries.**

"B' Licenses (90)

Forty-two percent of those earning less than 25% of their incomes from these fisheries were likely or very likely to sell, and 30% at that proportion of earnings said they would sell their licenses for less than $300,000. See Table 8.

At the request of the CRAB Group, Dennis Mandell of KPMG Peat Marwick, LLP, testifying before the NPFMC on September 23, 1997, proposed the following program model: 1) solicit binding bids; 2) rank bids and calculate cost; 3) determine compatibility with loan parameters; 4) apply for industry approval (referendum); 5) obtain program funding. This structure could provide a high degree of comfort with the program.[36]

[35]The survey was revised in November 1997, to take account of responses since June 1997. See attachment.
[36]It is doubtful whether this sequence complies with the intent of Congress in section 312(d) of the MSA.

Timing difficulties arise, however, when the reviews and regulatory procedures necessary to implementation of a buyback and conduct of a referendum by the Secretary of Commerce come into consideration. Section 312(d) of the Magnuson-Stevens Act, for instance, requires that referenda precede final implementation plans. Mandell correctly indicates that the entire process, from bidding through funding, must be completed within a year.

The alternative suggested, here, is to treat the elements of the proposed model as necessary conditions that must be met prior to purchasing licenses. By this approach, an industry referendum would be conducted in advance of the reverse auction, with the referendum stipulating minimum standards of performance that must be met prior to program funding. In this manner, bidding becomes more focussed and complies with legal requirements.[37] Bidders know that funding is approved in principle, and that failure to bid competitively will delay or derail the program, for which no remedial alternative is in sight.

The proposed program stipulates that licenses will be purchased in a buyback, only if no less than 10% of actual effort is retired; that those licenses which have not been active in the fisheries in the 33-month period prior to the decision of the NPFMC to request that the Secretary of Commerce proceed with the buyback will be non-transferable and subject to further restrictions on use and to mandatory retirement at the end of the twenty-year loan repayment period.

VII. THE REQUIREMENTS OF FAIRNESS

A buyback is an allocation system. Section 312(b)(1)(B) of the MSA requires that a buyback be consistent with the FMP to which it relates. Section 301(a) of the MSA requires that FMPs and their regulations be consistent with the National Standards of that Act. (See Legal Analysis, appended hereto, for full discussion.)

MSA National Standard 4 provides:

> Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be--
> (A) fair and equitable to all such fishermen;
> (B) reasonably calculated to promote conservation; and
> (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

National Standard 5 of the MSA provides:

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[37]See MSA section 312(d).

> Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

MSA section 303 provides for the establishment of limited access systems, taking into account--

> (A) present participation in the fishery,
> (B) historical fishing practices in, and dependence on the fishery,
> (C) the economics of the fishery,
> (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
> (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and
> (F) any other relevant considerations.

As reflected in the language of National Standard 4 and implied in National Standard 5, fairness is a key requirement for a buyback and for the LLP to which it relates. MSA section 303, in the context of limited entry, provides factors that are relevant to the requirement for fairness.

The buyback will establish the basis upon which licenses will be purchased and retired. Amendments to the FMP will address restrictions and conditions that will facilitate the buyback. The NPFMC and Secretary of Commerce may act to limit further the number of licenses issued under the LLP, and thus to reduce the number of licenses eligible for buyback, by revised landing requirements or by other measures. Action might well be taken to prevent increased participation in the fisheries driven by speculative intent to qualify.

It has been argued, by some, that new restrictions should not be imposed on those who moved to other fisheries and thereby reduced pressure on the BSAI king and Tanner crab resources and the remaining crab fishery participants. In response, it is observed that the movement of capital among fisheries is governed, not by the altruistic action of investors, but by the perception of opportunity and the availability of return. The fact is that 24.5% of the vessels to be issued licenses under the LLP qualifications for BSAI king and Tanner crab did not make a delivery of crab in the 33 months of the PDP.[38] This strongly indicates that the return to capital has been, and continues to be, greater in other fisheries. Accordingly, those fishing businesses that were able to take advantage of movement to more lucrative fisheries did so, and are no longer dependent on the BSAI king and Tanner crab fisheries. For those who have been more consistently dependent on the BSAI crab fisheries, a return of long-absent or episodic capacity would inflict additional, extreme hardship.

In the worst case, a sudden influx of such excess capacity at the point where the BSAI king and Tanner crab resources showed signs of recovery could defeat the entire conservation effort, and thus prevent the reestablishment of sustainable fisheries. Any LLP amendments that would further protect the BSAI king and Tanner crab fisheries from such consequences would be in the best interest of the resource and the fishermen and communities that depend upon it.[39]

The proposed system of "A" and "B" Licenses would preclude the worst case, and thus would

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38. See Table 8 and Vessels Worksheet, attached.

39. For an instance of a sudden influx of capacity into a fishery, consider that in the 1996/1997 season, for Bristol Bay red king crab, there were 196 vessel registrations, while in the 1997/1998 season, there were 258.

ensure that the post-buyback fisheries would not be threatened with unsustainable levels of capacity. This would be fair to those license holders who have been, and would remain, dependent on the BSAI king and Tanner crab fisheries. By paying a reasonable price for the relinquishment of licenses not representing a recent continuity of dependence on the fisheries, fairness would be achieved for those holders who feel that the option of return to the BSAI king and Tanner crab fisheries has value and should only be relinquished for compensation. For those opting to continue holding these "B" Licenses, economic return would be permitted by participation in the post-buyback BSAI king and Tanner crab fisheries. However, to be fair to the BSAI king and Tanner crab fisheries-dependent holders of "A" Licenses, the "B" Licenses would be subject to restrictions on transfer and use, and would be permanently retired at the end of the loan repayment period.

The proposed buyback is consistent with the National Standards, including 4 and 5, and takes into account the factors in section 303 of the MSA. Present participation in, and dependence on, the fishery are key factors in the establishment of the buyback PDP, as they were in the establishment of the Endorsement Qualifying Period ("EQP"). Of course, historical participation must be a factor, and that is reflected in both the PDP and the EQP. Taken together, the EQP and the PDP establish eligibility and category of license. The PDP is structured so that the class of dependent license holders ("A" Licenses) is very inclusive. Any legal landing of BSAI king or Tanner crab during the 33-month period of the PDP by a vessel that also qualifies for a license under the EQP is sufficient to qualify that vessel for an "A" License. On the other hand, there is no demonstrable, recent continuity of dependence on those fisheries by vessels that will receive "B" Licenses.

VIII. "ACHIEVING BALANCE"

The group of vessels which will receive "B" Licenses fall into the following categories:

1. Vessels that have moved to fishery opportunities elsewhere. This category includes--

   a. Vessels that moved to other fisheries that are within the jurisdiction of the NPFMC;
   b. vessels that moved to fisheries under the jurisdictions of other Councils or of States;
   c. vessels that moved to the jurisdictions of other nations.

2. Vessels that left the BSAI king and Tanner crab fisheries for other employment, and had rights in BSAI fisheries removed and transferred to other vessels that entered those fisheries. (Two vessels in this category will also qualify for "A" Licenses.)

3. Vessels that left the BSAI king and Tanner crab fisheries for employment other than in fisheries, most notably oilfield support work.

4. Vessels that were lost and were replaced. These are vessels that will have licenses that have re-entered the fisheries regulated by the NPFMC and have registered transfer of moratorium rights with the NMFS Restricted Access Management ("RAM") division. (Some will also qualify for "A" Licenses.)

5. Vessels that were lost and not replaced. These involve prospective claims to access to the fisheries, and are most likely not forgotten. They have left no record in RAM division of moratorium transfer, but may have moved capital (and perhaps potential rights) to other vessels that are moratorium- or LLP-qualified.

6. Other vessels that left all employment.

The CRAB Group has made a thorough examination of the CFEC listings of vessels that registered for the BSAI king and Tanner crab FMP fisheries throughout the EQP and the PDP. The listing of vessel registrations is very similar to the LLP qualifications, differing in only one respect. The LLP qualification has a requirement for delivery of product, and deliveries of product fall under confidentiality rules (it is not clear that mere fact of delivery is confidential; the amount clearly is confidential). In order to deliver product, a vessel must first have registered, however, a registered vessel might not deliver, due to accident or other circumstance. Therefore, the class of vessels considered may have been slightly larger than the class of vessels qualifying for the LLP licenses.

Consideration of the cultural and social framework relevant to the BSAI king and Tanner crab fisheries and affected fishing communities, includes the following:

- The nascence of the CDQ program for BSAI king and Tanner crab FMP fisheries under the LLP has provided direct access, accompanied by investment in active, qualified fishing operations, for communities in the region that formerly had more limited abilities to take part in the industry. The provisions of the buyback will produce no negative impacts on the CDQ program, but rather, will enhance the health of the resource, the viability of participating businesses, and the economic and social conditions in the affected communities.

- A Captain who has no ownership interest in vessels or in the LLP licenses has suggested that the buyback would diminish his chance of obtaining ownership of vessels and licenses, because a buyback would eliminate "cheap " (i.e., plentiful) licenses. This reasoning is faulty. The value of licenses is tied to the health of the industry. In times of economic distress, as at present, "bargains" may well be available, due to fishing business failures. However, financing is very difficult to obtain, but nonetheless, is necessary at the levels of capitalization required for BSAI king and Tanner crab fishing businesses. Thus, "bargains" induced by hard economic conditions tend to favor established, historically successful owners, who are expanding their businesses. Financing of new operators is more readily available when, as is not now the case, fisheries are profitable. In the BSAI king and Tanner crab fisheries, more operators are included in ownership of businesses through partnership with existing operators, than by any other means.

- On first reading, one reaction to the proposed division of licenses into "A" and "B" classes, was that this division disadvantaged those receiving "B" Licenses and could be expected to meet opposition from their prospective holders. This reading is cursory, and in fact, the division is structured to produce the maximum program benefit for all. If no division existed, then only active participants could expect to succeed in bidding, and no program funds would be available to retire licenses of those no longer actively prosecuting the fisheries.

The industry self-assessment, taken strictly as a percentage of the current gross stock of vessels participating in the fisheries, will fail to recover program costs from those holding licenses, but not using them. This option will share the costs of the program in the same ratio as participants take benefit from participation in the fisheries, that is, those who earn more will pay more of the costs, and those earning nothing (i.e., holders of inactive licenses) would pay nothing. While it is true that those prosecuting the fisheries receive the benefits available from this resource extraction, it is also true that the future value of an unused license is increased as a direct benefit of the investment by those who pay post-buyback fees on landed crab, and as a result of the eventual improvements in resource conditions. **It is clear that, to be fair to all participants, the program must be structured to recover buyback costs from holders of all licenses. The assessment of landings achieves this.**

Without constraint, the dormancy period of inactive licenses may last until the fisheries have improved sufficiently to warrant, in the opinion of a license holder, his or her return to active participation. In this respect, the holder of an inactive license is performing an unintended service to active participants in the fisheries, by not bringing additional excess capacity into the crab fisheries. This service is quickly repaid when conditions are deemed favorable, and unfortunately, the rapid re-entry of vessels to recovering fisheries is a large factor in continued instability and failure to achieve sustainable harvest levels for a longer term. **It is clear that to be fair to all participants, the program must be structured to recover more costs from active than from inactive licenses. The assessment of landings achieves this.**

Without constraint, inactive licenses may also become active when they are sold to different operators. This is a primary source of speculative activity in buyback programs that become money pumps for speculators. In addition, the necessity to show return to capital (which has been brought to the system by these operators) assures that the maximum number of licenses originally issued in license limitation programs will, over time, become the number of active licenses. The limited entry system, designed to reduce capacity, will thereby serve, instead, to increase capacity. **It is clear that the large number of "B" Licenses which may result from the broad inclusion of the EQP and the PDP will destroy the capacity reduction program, a patently unfair result, unless the "B" Licenses are made nontransferable, and subject to other constraints on use.**

The structure of the buyback business plan balances program costs and benefits to achieve fairness. Two different buyback auctions are incorporated so that:

1. Those opting to sell active licenses can do so, while providing incentive for those continuing in the fisheries to pay for the program.

2. Those opting to sell inactive licenses can do so, while providing a reduction of potential future effort to those continuing in the fisheries, at lower cost than those opting to sell active licenses.

3. Those actively continuing in the fisheries will receive the benefit of reduced capacity from the buyback, and will pay the program costs.

4. Those wishing to continue the option of future participation in the fisheries without active current dependence will be able to do so. They will retain the ability to benefit from future participation in the fisheries improvement program paid for by active licenses and will be restrained from selling these benefits to others.

IX. DISCUSSION

Fishing overcapacity is actual and potential harvesting capacity that exceeds the optimum yield in a fishery. Subject to certain legal requirements, a fishing capacity reduction program, as authorized by the MSA, may be conducted where a reduction of overcapacity is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery.

Overcapacity can result from "input stuffing" (increases in capital or labor) as well as improved knowledge leading to more efficient exploitation, and from downturn in a population that has already been exploited near the limit of sustainability.

Fishing overcapacity is often first recognized as a decline in revenue, following a period of increasing revenues. This decline becomes precipitous when the fishing capacity of the fleet has significantly increased during the period of increasing revenues, and the resource has significantly declined, or has failed to grow at a rate approximating the increase in capacity. Full recovery of affected fish stocks is not always achievable. [40]

A sustainable fishery may be untenable in the face of pressures brought about by overcapacity. In this instance, there is always demonstrably more reason to fish at levels deemed economically expedient, than at more precautionary levels. This is simply seen as the difference between money in the bank, and the uncertainty of population dynamics and management efforts. The problem of loss of profitability deepens as overcapacity leads to decline of fishery resources - and fishery resources have failed in one region after another, despite a variety of management regimes, without having addressed this problem.

[C]rab stocks in the Bering Sea are managed by the State of Alaska through a federal King and Tanner crab fishery management plan (FMP). Under the FMP, management measures fall into three categories: (1) those that are fixed in the FMP under Council control, (2) those that are frameworked so the State can change them following criteria outlined in the FMP, and (3) those measures under complete discretion of the State. [41]

This system generally works well, and has become the model for the developing Pacific Coast Dungeness crab FMP. In order to facilitate its function, and to minimize any frictions that

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40 Marine Fisheries at a Critical Juncture, Michael P. Sissenwine and Andrew A. Rosenberg, FISHERIES, Vol. 18, No. 10, October 1993.

41 Crab Species Profiles: 1998, by Dave Witherill:

develop, the Crab Plan Team was formed, with ten members representing ADF&G, NMFS, UAF and NPFMC; also, the NPFMC and the BOF conduct joint meetings at least annually, and a conference committee of NPFMC and BOF members meets more frequently.[42]

This structure is designed to manage the BSAI crab fisheries effectively, nevertheless, the crab fisheries of the Bering Sea and Aleutian Islands have exhibited signs of overcapacity. For example, following Bristol Bay red king crab landings of 128 million lbs. in 1980 (at exploitation rates now deemed excessive) the fishery plummeted to 32.8 million lbs. in 1981, and then to 2.9 million lbs., and then to total closure in the subsequent two years. This fishery continues to hover at depressed levels.[43][44]

In 1981, the fleet was exploiting eight species/area fisheries that were managed as separate stocks. Each of these populations has fared differently, with several experiencing closures of one or more years to a directed fishery. The same eight described under "Elements of the BBP" constitute the fisheries of 1997. **(See Table 1.)**

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[42]See: Crab Plan Team Report, Joint Meeting of the North Pacific Fishery Management Council And the Alaska Board of Fisheries, February 3, 1998

[43]All data used in this document were taken from the Alaska Department of Fish and Game Westward Region Annual Report(s) to the industry for the years concerned, or were derived from these data through simple arithmetic operations.

[44]The period examined in this discussion is 1980 to 1996. Fisheries which began in a calendar year have been compiled to that year in the tables which support this discussion - therefore the fishery identified as 1996 Adak brown king crab is still underway, at this draft, in July of 1997. This is the only fishery that has bridged the calendar year in 1996/7, however other fisheries that have done so during the period (80-96) include the Adak red king crab fishery

Ex-vessel prices have varied greatly, and have not been smoothly related to the size of the harvest in these fisheries, because there are other nations delivering the same species into a world market, and for other reasons. **(See Table 2.)**

TABLE 1 & TABLE 2

TABLE 1	HARVEST, BSAI FMP CRAB FISHERIES (lbs.)								
ADF&G TABLE	4-6	3-2	4-4	5-12	5-7	5-2	5-21	5-28	
Year\Fishery*	Adak RKC	DH BKC**	Adak BKC**	St. Matthew	Pribilof	BB RKC	Bairdi	Opilio	Total
1976	no fishery	no fishery	NA	NA	6,600,000	63,000,000	22,200,000	no fishery	NA
1977	900,000	no fishery	NA	1,100,000	6,300,000	69,200,000	51,200,000	no fishery	NA
1978	800,000	no fishery	NA	1,900,000	6,300,000	86,400,000	66,400,000	1,700,000	NA
1979	450,000	no fishery	NA	210,000	5,700,000	104,200,000	4,250,000	31,400,000	NA
1980	1,400,000	no fishery	50,000	NA	10,700,000	128,089,795	36,500,000	39,300,000	NA
1981	1,600,000	100,000	1,200,000	4,600,000	9,100,000	32,880,079	29,600,000	50,500,000	129,580,079
1982	1,700,000	1,100,000	7,800,000	8,700,000	4,400,000	2,905,376	10,900,000	28,300,000	65,805,376
1983	1,900,000	1,800,000	8,000,000	8,600,000	2,200,000	no fishery	5,200,000	24,800,000	52,500,000
1984	1,400,000	1,500,000	3,100,000	3,700,000	300,000	4,146,805	1,200,000	26,000,000	41,346,805
1985	900,000	1,900,000	11,100,000	2,400,000	500,000	4,168,517	3,100,000	64,900,000	88,968,517
1986	700,000	1,800,000	12,500,000	1,000,000	300,000	11,109,807	no fishery	96,600,000	124,009,807
1987	1,200,000	1,400,000	7,800,000	1,100,000	700,000	12,168,679	no fishery	100,900,000	125,268,679
1988	1,600,000	1,500,000	9,000,000	1,300,000	no fishery	7,364,258	2,200,000	130,800,000	153,764,258
1989	1,100,000	1,800,000	10,100,000	1,200,000	no fishery	10,183,457	7,000,000	147,600,000	178,983,457
1990	700,000	1,700,000	5,100,000	1,700,000	no fishery	20,245,815	64,200,000	160,000,000	253,645,815
1991	900,000	1,400,000	6,200,000	3,200,000	no fishery	17,058,224	31,500,000	325,200,000	385,458,224
1992	1,300,000	1,300,000	4,800,000	2,500,000	no fishery	8,034,018	35,100,000	313,000,000	366,934,018
1993	700,000	900,000	4,500,000	3,000,000	2,600,000	14,495,197	16,900,000	229,200,000	272,295,197
1994	200,000	1,700,000	6,100,000	3,700,000	1,300,000	no fishery	7,600,000	148,000,000	168,600,069
1995	38,941	1,900,000	4,600,000	3,100,000	2,200,000	no fishery	4,200,000	74,000,000	90,038,941
1996	no fishery	3,300,000	2,500,000	3,100,000	1,100,000	8,381,448	1,800,000	64,400,000	84,581,448
*1997****	no fishery	***	***	4,600,000	1,700,000	8,742,719	no fishery	117,100,000	>132,000,000
								234,000,000	

* All data conforms to latest available presentations - Regional Information Report No. 4K97-41, July 1997 & appended material
This material differs in presentation from earlier versions, particularly in the manner in which it is tallied to a given year.

** After 1985, the Aleutian brown king crab districts were redefined, with a shift in the boundary between the districts. Total area (and total of catch data) coverage remain the same.

*** The Eastern Aleutians (formerly Adak) brown king crab fishery begins in September, and typically continues into August the following year.
Data not yet available.

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and the Bering Sea bairdi Tanner crab fishery.

TABLE 2			EX-VESSEL VALUES, BSAI FMP CRAB FISHERIES ($/lb.)					
Year\Fishery*	Adak RKC	DH BKC**	Adak BKC	St. Matthew	Pribilof	BB RKC	Bairdi	Opilio
1976	NA	no fishery	NA	NA	0.58	0.58	0.19	NA
1977	NA	no fishery	NA	NA	1.11	1.11	0.30	NA
1978	NA	no fishery	NA	NA	1.23	1.23	0.38	0.38
1979	NA	no fishery	NA	NA	1.01	1.01	0.52	0.30
1980	0.92	no fishery	0.90	NA	0.90	0.90	0.52	0.21
1981	2.01	2.05	2.06	NA	1.50	1.50	0.58	0.26
1982	3.44	3.00	3.01	NA	3.05	3.05	1.06	0.73
1983	3.43	3.05	2.92	3.00	3.00	no fishery	1.20	0.35
1984	2.10	1.35	2.00	1.75	2.50	2.60	0.95	0.30
1985	2.15	2.00	2.50	1.60	2.90	2.90	1.40	0.30
1986	3.85	2.85	3.00	3.20	4.05	4.05	no fishery	0.60
1987	4.00	2.85	3.00	2.85	4.00	4.00	no fishery	0.75
1988	5.00	3.00	3.20	3.10	no fishery	5.10	2.17	0.77
1989	4.20	3.50	3.00	2.90	no fishery	5.00	2.90	0.75
1990	4.00	3.00	3.00	3.35	no fishery	5.00	1.40	0.64
1991	3.00	2.00	2.50	2.80	no fishery	3.00	1.50	0.50
1992	5.05	2.50	2.05	3.00	no fishery	5.00	1.69	0.50
1993	3.87	2.15	2.50	3.23	4.98	3.80	1.90	0.75
1994	5.50	4.00	3.33	4.00	6.45	no fishery	3.75	1.30
1995	2.70	2.60	2.10	2.32	3.09	no fishery	2.80	2.43
1996	no fishery	2.06	2.28	2.20	2.73	4.01	2.50	1.33
1997	no fishery	NA	NA	2.21	4.35	NA	no fishery	0.79

The number of vessels pursuing these fisheries has fluctuated - in 1984, the largest fleet assembled at St. Matthews Island, numbering 90 vessels, while 302 vessels participated in the 1991 Bristol Bay red king crab fishery. **(See Table 3.)**

With the notable exception of the Adak area, which has often opened and closed by regulatory calendar dates, the number of days fisheries were opened varied, in most cases, with the size of the resource (quota) and the amount of fishing effort. In a given year, the total number of days fisheries were open (obviously, several may be open at once) varied as well - from the minimum, 347 days in 1996, to the maximum in 1984, 1,041 days. **(See Table 4.)**

TABLE 3 Year\Fishery*	VESSELS DELIVERING: BSAI FMP FISHERIES									
	Adak RKC	DH BKC**	Adak BKC	St. Matthew	Pribilof	BB RKC	Bairdi	Opilio	Registrations TOTAL (r)	Largest Fleet (f)
1986	33	17	62	38	16	159	no fishery	103	428	159
1987	71	22	46	61	38	236	98	171	743	236
1988	73	21	74	46	no fishery	200	98	168	680	200
1989	56	13	64	69	no fishery	211	179	189	781	211
1990	7	16	13	31	no fishery	240	255	220	782	255
1991	10	11	16	68	no fishery	302	285	250	942	302
1992	12	10	18	174	no fishery	281	294	254	1,043	294
1993	12	4	21	92	112	292	283	273	1,089	292
1994	20	14	34	87	104	no fishery	183	253	695	253
1995	4	17	25	90	117	no fishery	196	235	684	235
1996	no fishery	15	13	122	119	196	196	228	889	228
1997	no fishery					258	no fishery			

ALL VESSEL ENUMERATIONS ARE OFFICIAL TALLIES AS REPORTED IN ADF&G WESTWARD REGION ANNUAL REPORTS, and CFEC PUBLIC INFORMATION LISTS

TABLE 4 Year\Fishery*	OPENING LENGTH (days) BSAI FMP FISHERIES									
	Adak RKC	DH BKC**	Adak BKC	St. Matthew	Pribilof	BB RKC	Bairdi	Opilio	Fishing days(t) TOTAL	Fleet Utility (t/f)
1986	107	182	288	5	55	13	no fishery	158	808	5.1
1987	107	62	289	4	86	12	93	120	773	3.3
1988	34	93	288	4	no fishery	8	110	112	649	3.2
1989	107	104	288	2.5	no fishery	12	89	148	751	3.6
1990	107	68	288	6	no fishery	12	126	159	766	3.0
1991	107	74	289	4	no fishery	7	137	97	715	2.4
1992	76	76	288	2.5	no fishery	7	137	59	646	2.2
1993	107	212	288	6	6	9	52	45	725	2.5
1994	27	57	288	7	6	no fishery	20	33	438	1.7
1995	107	38	289	5	7	no fishery	15	28	489	2.1
1996	no fishery	115	365	8	7	4	12	28	539	2.4
1997	no fishery						no fishery			

NOTES: * ADF&G management years are subsequent to a summer survey, thus 1986 is 1986/1987 calendar year, etc.
** After 1995, this area is combined with Adak area catch. Data not yet available.

ALL SEASON LENGTHS ARE OFFICIAL TALLIES AS REPORTED IN ADF&G WESTWARD REGION ANNUAL REPORTS

TABLE 3 & TABLE 4

Revenue to the fleet was at minimum in 1984, at $38.1 million and maximum in 1990, at $322.9 million. **(See Table 5.)** [45]

Chart 1, which is posted from data compiled in **Table 6,** depicts the swing of revenue in three curves:

1) Crab fleet revenue- gross revenue totaled for all eight fisheries, which is the product of the combined landings [46] of the fleet and the published ex-vessel price [47] for each of the fisheries.

2) The five -year average fleet revenue smooths the fleet gross revenue curve, resulting in less range.

3) The vessel revenue curve is produced from the division of the total fleet gross revenue **(i, Table 5)** by the largest fleet number **(f, Table 3)**. [48]

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[45] **Note that revenue figures have been treated without adjustment for inflation, throughout this discussion.**
[46] Not including deadloss.
[47] A figure derived from fish ticket information by ADF&G.
[48] This is of less range than the fleet revenue curves because of the inverse relation between the number of vessels and the expected revenue. This curve is similarly shaped, but at higher income, than the average revenue curve resulting from the actual number of vessels which took part, which is closer to the sum of those registering in short fisheries with simultaneous openings.

All three curves follow the same trends. Decreased fleet revenue is directly related to increased fishing capacity.

Please note that levels of effort vary widely between the fisheries and from year- to- year (see **Table 3**). The buyback business plan proposes to focus the implementation of reductions of effort in the two fisheries with the most participants, the Bristol Bay red king crab fishery and the westward region Tanner crab (opilio and bairdi) fisheries. Also recall that under provisions of the LLP, a general (umbrella) license for crab fishing in the BSAI region will be required for a vessel to participate in any of the eight fisheries, and a specific endorsement (one of six) for the fishery in question must also be in possession of the vessel. The LLP prohibits these endorsements being severed from the general license; thus each vessel will receive its unique, or near unique, set of privileges to fish, based upon history, at program initiation.

It is certain that some vessels with "B" Licenses will have endorsements to fish in fisheries for which there will not be 200 registered vessels, because some fisheries will not have 200 endorsements issued. This may provide sufficient justification for the portion of the buyback funds devoted to "B" Licenses, however, there is more: The nature of the program is such that it cannot proceed if a two-thirds approval of the affected vessel owners is not obtained by referendum. The raw number of licenses issued which will fit the "B" classification approaches one-third of the total number. This portion of the buyback, then, may be an essential element. It is certain that many "B" Licenses will not be able to fish in most years. This will induce many owners of these licenses to sell, given the opportunity under a buyback. This is consistent with the results of the poll commissioned from the McDowell Group. It is observed, however, that "registration" and "number of licenses" are not at all the same thing. It is conceivable that some "B" License holders (particularly those which are fully employed in the pollock fishery at present) may opt to continue to hold licenses for the eventual occurrence of years in which effort drops below 200 vessels in the major fisheries, because of other opportunity, or diseconomies that may result from calendar effects, as well as other factors. In some years, such constraint may create opportunity for "B" class vessels. In the event, some mechanism, such as a lottery, will be required for managers to regulate entry of "B" License vessels into the fishery and to limit the numbers that will be allowed. FMP changes should be flexibly drafted to accommodate fisheries managers in this.

TABLE 5 & TABLE 6

TABLE 5	FLEET GROSS REVENUES, BSAI FMP ($)				10 YEAR AVERAGE INCOME, 1986/7 through 1995/6 =>				$241,819,414
Year\Fishery*	Adak RKC	DH BKC**	Adak BKC	St. Matthew	Pribilof	BB RKC	Bairdi	Opilio	Total (I)
1976	NA	no fishery	NA	NA	3,828,000	36,540,000	4,218,000	NA	>45,000,000
1977	NA	no fishery	NA	NA	6,993,000	76,812,000	15,360,000	NA	>100,000,000
1978	NA	no fishery	NA	NA	7,749,000	106,272,000	25,232,000	646,000	>140,000,000
1979	NA	no fishery	NA	NA	5,757,000	105,242,000	2,210,000	9,420,000	>123,000,000
1980	1,288,000	no fishery	50,000	NA	9,600,000	115,300,000	19,000,000	82,500,000	>230,000,000
1981	3,216,000	200,000	2,400,000	NA	13,600,000	49,300,000	17,200,000	13,100,000	>100,000,000
1982	5,848,000	3,300,000	23,400,000	NA	13,400,000	8,800,000	11,500,000	20,700,000	>87,000,000
1983	6,517,000	5,500,000	23,200,000	25,800,000	6,600,000	no fishery	6,200,000	8,700,000	82,517,000
1984	2,940,000	2,000,000	6,100,000	6,500,000	100,000	10,800,000	1,100,000	7,800,000	37,340,000
1985	1,935,000	3,800,000	27,800,000	3,800,000	1,400,000	12,100,000	4,300,000	19,500,000	74,635,000
1986	2,695,000	5,100,000	37,600,000	3,200,000	1,200,000	45,000,000	no fishery	60,000,000	154,795,000
1987	4,800,000	4,000,000	23,500,000	3,100,000	2,800,000	48,700,000	no fishery	75,700,000	162,600,000
1988	8,000,000	4,500,000	28,700,000	4,000,000	no fishery	37,600,000	4,800,000	100,700,000	188,300,000
1989	4,620,000	6,300,000	30,200,000	3,500,000	no fishery	50,900,000	20,300,000	110,700,000	226,520,000
1990	2,800,000	5,100,000	15,200,000	5,700,000	no fishery	101,200,000	89,800,000	102,400,000	322,200,000
1991	2,700,000	2,800,000	15,400,000	9,000,000	no fishery	51,200,000	47,300,000	162,600,000	291,000,000
1992	6,565,000	3,300,000	9,900,000	7,400,000	no fishery	40,000,000	58,800,000	156,500,000	282,465,000
1993	2,709,000	1,900,000	11,200,000	9,700,000	13,000,000	55,100,000	31,600,000	171,900,000	297,109,000
1994	1,100,000	6,900,000	20,400,000	15,000,000	8,600,000	no fishery	28,500,000	192,400,000	272,900,000
1995	105,141	5,000,000	9,600,000	7,100,000	6,800,000	no fishery	11,700,000	180,000,000	220,305,141
1996	no fishery	6,800,000	5,700,000	6,700,000	3,000,000	33,600,000	4,500,000	85,600,000	145,900,000
1997***	no fishery	***	***	9,800,000	7,400,000	28,500,000	no fishery	92,500,000	>138,000,000

* All data conforms to latest available presentations - Regional Information Report No. 4K97-41, July 1997 & appended material (enclosed) This material differs in presentation from earlier versions, particularly in the manner in which it is tallied to a given year.

** After 1985, the Aleutian brown king crab districts were redefined, with a shift in the boundary between the districts. Total area (and total of catch data) coverage remain the same.

*** The Eastern Aleutians (formerly Adak) brown king crab fishery begins in September, and typically continues into August the following year. Data not yet available.

Reference->	CHART 1		CHART 2		Table 3		Table 4
TABLE 6 Year\	Vessel Income(I/f)	Fleet Income Total (I)	Vessel Utility (t/f)	Capacity (r/t)	Registrations Total (r)	Largest Fleet (f)	Open days Total (t)
1986	973,553	154,795,000	5.1	0.53	428	159	808
1987	688,983	162,600,000	3.3	0.96	743	236	773
1988	941,500	188,300,000	3.2	1.05	680	200	649
1989	1,073,555	226,520,000	3.6	1.04	781	211	751
1990	1,263,529	322,200,000	3.0	1.02	782	255	766
1991	963,576	291,000,000	2.4	1.32	942	302	715
1992	960,765	282,465,000	2.2	1.62	1,043	294	646
1993	1,017,497	297,109,000	2.5	1.50	1,089	292	725
1994	1,078,656	272,900,000	1.7	1.59	695	253	438
1995	937,469	220,305,141	2.1	1.40	684	235	489
1996	639,912	145,900,000	2.4	1.65	889	228	539
1997	NA	NA	NA	NA	NA	NA	NA

NOTES: * ADF&G management years are subsequent to a summer survey, thus 1986 is 1986/1987 calendar year, etc.

** After 1995, this area is combined with Adak area catch. Data not yet available.

ALL REVENUES ARE OFFICIAL TALLIES AS REPORTED IN ADF&G WESTWARD REGION ANNUAL REPORTS

No quantitative definition of overcapacity has been advanced for these fisheries, however a qualitative determination is possible. Overcapacity exists because: (A) the number of vessels available to fish increased from 1984 onward; (B) the number of vessels in the largest fleet registered for a fishery; and (C) the total number of fishery registrations all increased dramatically between 1986 and 1991. As capacity increased, revenue increased, until peak revenue occurred in 1991, followed by a short period of relative stability in income, registrations and fleet size through 1993, <u>and a decline in income, registered fleet size, and vessel registrations, afterward</u>. The severity of the problem of continuing overcapacity is underscored by the fact that, despite a shrinking fleet, the number of days available to fish has also diminished.

Limited entry is intended to constrain or reduce capacity in a fishery. A limit may be placed on the number of vessels that may participate. Additional measures designed to control the capacity of those vessels (such as length restrictions and pot limits) are standard features of limited entry programs. It is of utmost importance that a limited entry program constrains the number of vessels to a level that will allow achievement of optimum yield on a continuing basis. Achievement of the optimum yield is required by National Standard 1 of the MSA. 16 USC 1851(a)(1).

As previously mentioned, the BSAI crab LLP as configured will license approximately 368 vessels, which we have shown to be above sustainable capacity. This is a considerable reduction from 759 qualified under the current moratorium. However, the elimination of licenses that have not participated in more recent fisheries would reduce the number to levels more consistent with achieving optimum yield.[49]

In August, 1997 the Alaska Board of Fish established very restrictive pot limits in the Bristol Bay king crab fishery in an effort to limit effort in exploitation of that resource. By the end of the pre-registration period required under the new regulations, 263 vessels had indicated the intent to fish and 258 actually registered for the fishery. The existing tools available to fishery managers are inadequate to protect the resource and provide for sustainable effort. In the long term, sustainable fisheries are unlikely to occur, if the fleet size much exceeds 200 vessels. The combination of action by the NPFMC taken to reduce the number of licenses originally issued under the LLP, and the institution of the industry-funded buyback plan, provides the potential to bring about the necessary reduction. Fishery managers will continue to be tested, at the reduced number, to limit the capacities of the fleet to sustainable levels.[50]

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[49]See Table A, above.
[50]See Board of Fish action for August, 1997.

CHART 1 & CHART 2

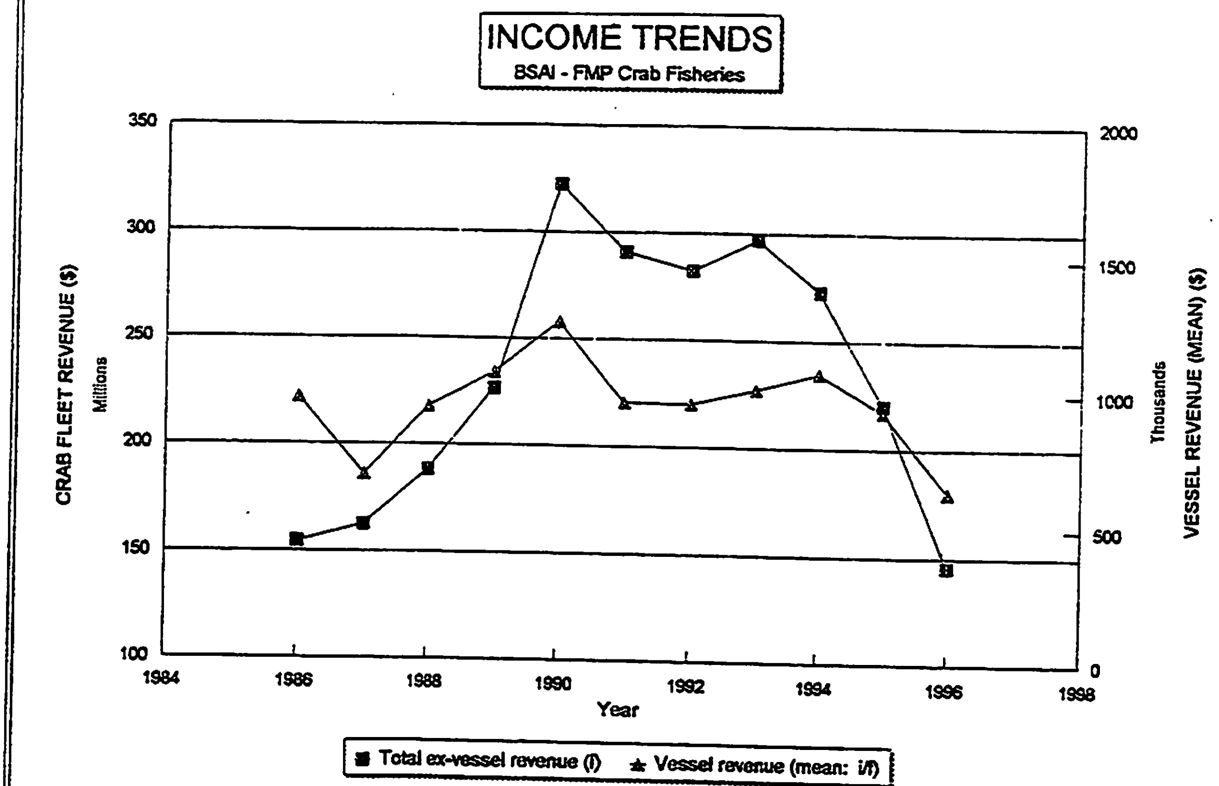


CHART 1 - see table 6

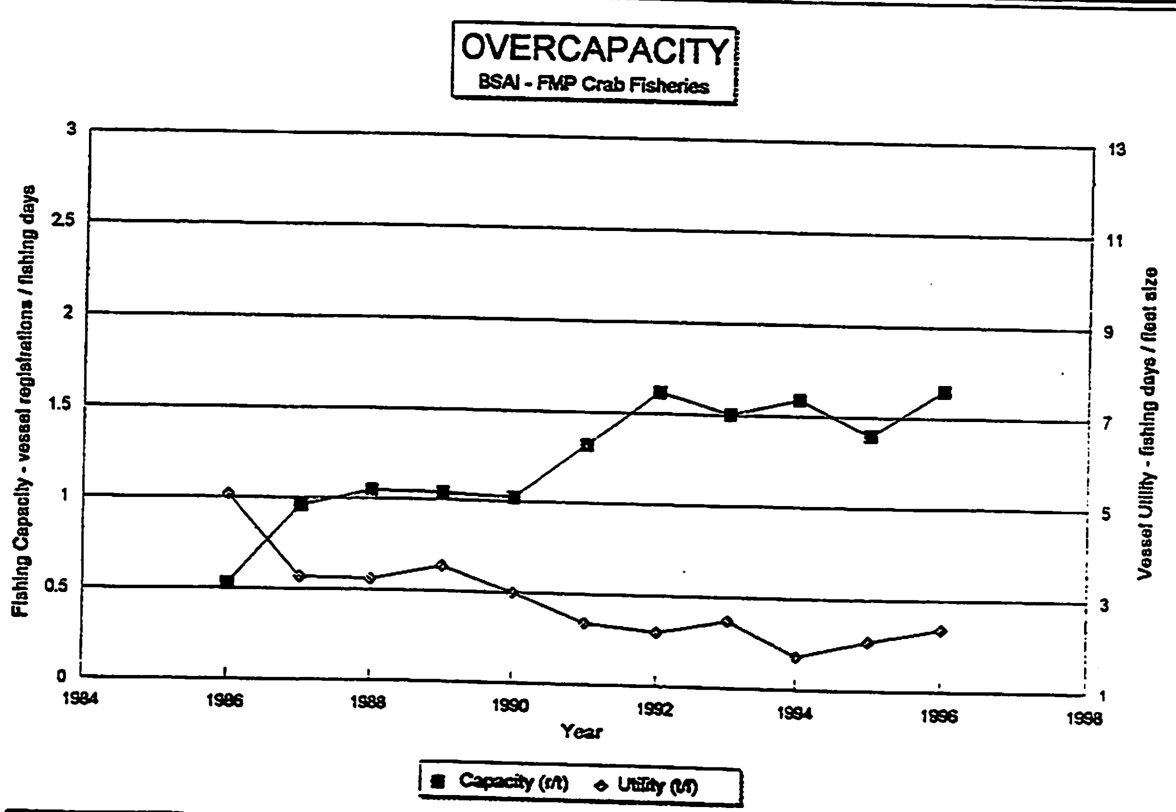


CHART 2 - see table 6

TABLE 7 & TABLE 8

Principle:	$60,000,000
Term:	20
Interest:	Payment:
7.5%	5,885,531
8.0%	6,111,133
8.5%	6,340,258

TABLE 7: Amortization of debt at historic levels of income and participation

BSAI FMP CRAB FLEET REVENUE			2.5%	Largest	Assessment per vessel	Percentage assessed to pay:
YEAR	Annual TOTAL	Annual VESSEL	assessment	Fleet (f)	at fleet size (f)	6,111,133
1986	154,795,000	973,553	3,869,875	159	24,339	3.9%
1987	162,600,000	683,983	4,065,000	238	17,225	3.6%
1988	188,300,000	941,500	4,707,500	200	23,538	3.2%
1989	226,520,000	1,073,555	5,663,000	211	26,839	2.7%
1990	322,200,000	1,283,529	8,055,000	265	31,588	1.9%
1991	291,000,000	963,576	7,275,000	302	24,089	2.1%
1992	282,465,000	960,765	7,061,625	294	24,019	2.2%
1993	297,109,000	1,017,497	7,427,725	292	26,437	2.1%
1994	272,900,000	1,078,656	6,822,500	253	26,966	2.2%
1995	220,305,141	937,469	5,507,629	235	23,437	2.8%
TOTAL:	2,418,194,141					
AVERAGE	241,819,414	992,283	60,454,854	244	24,807	2.5%

TABLE 8: Buyback Program costs and benefits

NOTE: This analysis assumes all "A" licenses will be utilized.

10 year Average Fleet Income:	241,819,414		
10 year Average Fleet size:	244	1-before LLP	
10 year Average Vessel Income:	992,283		
Estimated Present "A" Fleet size:	278	2-after LLP	75.5%
Average "A" Vessel Income:	869,854		
Estimated Present "B" Fleet size:	90		24.5%
1995/6 Fleet Income/LLP vessels:	792,465	3-"worst case" after LLP	
Projected annual payment:	6,111,133		

Program principle cost:	$60,000,000	
"A" License portion:	45,326,087	75.5%
"B" License portion:	14,673,913	24.5%

Retired "A" Licenses:	"A" fleet reduction:	Resulting Fleet Size:	Average Vessel Income:			Buyback Program Cost to Average Vessel:			Continuing "A" License Vessel Net Income after buyback			Continuing "A" License Vessel Net Benefit from buyback after LLP			Funds to retire average "A" license
After buyback			1-before LLP	2-after LLP	3-"worst case"	1-before LLP	2-after LLP	3-"worst case"	1-before LLP	2-after LLP	3-"worst case"	1-before LLP	2-after LLP	3-"worst case"	
28	10%	250	992,283	966,504	880,516		24,425	24,425	992,283	942,079	856,091		72,225	63,627	1,618,789
31	11%	247	992,283	977,384	890,410		24,699	24,699	992,283	952,665	865,710		82,811	73,246	1,462,132
33	12%	245	992,283	988,470	900,628		24,880	24,880	992,283	963,490	875,548		93,636	83,083	1,373,518
36	13%	242	992,283	999,832	910,879		25,267	25,267	992,283	974,565	885,612		104,711	93,147	1,259,058
39	14%	239	992,283	1,011,458	921,470		25,561	25,561	992,283	985,897	895,909		116,043	103,445	1,162,207
42	15%	236	992,283	1,023,358	932,311		25,862	25,882	992,283	997,496	906,449		127,642	113,985	1,079,193
44	16%	234	992,283	1,035,540	943,410		26,170	26,170	992,283	1,009,371	917,241		139,517	124,776	1,030,138
47	17%	231	992,283	1,048,017	954,777		26,485	26,485	992,283	1,021,532	928,292		151,678	135,827	964,885
50	18%	228	992,283	1,060,788	966,420		26,808	26,808	992,283	1,033,980	939,612		164,136	147,148	906,522
53	19%	225	992,283	1,073,894	978,351		27,139	27,139	992,283	1,046,755	951,212		176,901	158,748	855,209
56	20%	222	992,283	1,087,318	990,581		27,478	27,478	992,283	1,059,839	963,103		189,985	170,638	809,394
58	21%	220	992,283	1,101,081	1,003,120		27,826	27,826	992,283	1,073,255	975,294		203,401	182,829	781,484
61	22%	217	992,283	1,115,197	1,016,980		28,183	28,183	992,283	1,087,015	987,797		217,161	195,333	743,051
64	23%	214	992,283	1,129,681	1,029,175		28,549	28,649	992,283	1,101,132	1,000,626		231,278	208,161	708,220
67	24%	211	992,283	1,144,545	1,042,716		28,924	28,924	992,283	1,116,620	1,013,792		245,766	221,328	676,509
70	25%	209	992,283	1,159,805	1,056,619		29,310	29,310	992,283	1,130,495	1,027,309		260,641	234,845	647,516
72	26%	206	992,283	1,175,478	1,070,898		29,706	29,706	992,283	1,145,772	1,041,192		275,918	248,727	629,529
75	27%	203	992,283	1,191,681	1,085,568		30,113	30,113	992,283	1,161,468	1,055,455		291,614	262,990	604,348
78	28%	200	992,283	1,208,131	1,100,645		30,531	30,531	992,283	1,177,599	1,070,114		307,745	277,649	581,104
81	29%	197	992,283	1,225,146	1,116,147		30,961	30,961	992,283	1,194,185	1,085,186		324,331	292,721	559,581
83	30%	195	992,283	1,242,649	1,132,092		31,404	31,404	992,283	1,211,245	1,100,689		341,391	308,224	546,097

AGENDA C-2(d)
OCTOBER 1998

RECEIVED
SEP 14 1998
N.P.F.M.C

9-12-98

To NPFMC:

I am writing in regards to the license buyback program for the Bering Sea and Aleutians crab fisheries. The CRAB group (not one member of which calls Alaska home) is proposing a plan whereby an estimated 98% of crab permits will be given to out-of-state interests. What adds insult to injury is that the meeting will be held in Seattle. They will hold meetings to give away Alaska's resources 2000 miles away! It is a thinly-veiled attempt to get the majority of licenses into the hands of non-resident fishermen. I cannot sit by while Alaskans get blocked out of another fishery in their own state.

I have seen how the halibut and sablefish IFQs have hurt the small Alaskan fishing villages. There has got to be a better way. I do agree that the safety issue is of great importance. There needs to be some provision to hold the fishery when the weather is safe to fish in.

Thank you for your consideration.

Joanna Ludvick McCallum Box 262 Sand Point, Ak 99661
907 383 5400

FRED A. YECK, President
(541) 867-3911

F/V Seadawn Fisheries, Inc.

P.O. Box 352 • Newport, Oregon 97365
Fax (541) 867-3913

F/V Seadawn

August 14, 1998

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501

RE: DRAFT BUSINESS PLAN FOR PROPOSED BUYBACK OF LICENSES FOR THE CRAB FISHERIES

Dear Chairman Lauber and Council Members:

I am the managing owner of a 124 foot combination trawl/pot vessel which has been engaged in the fisheries managed by this Council almost continuously since 1973. My vessel participated in the crab fisheries for at least 16 of those 24 years and recently has participated in at least one crab fishery in a majority of years since 1991. My vessel also participates in the trawl fisheries and, therefore, because of its diversification, does not compete with the pot fleet in every season.

A group or groups representing crab boats have submitted proposals to the Council for retroactive changes to the License Limitation Program and have now proposed this License Buyback Plan, which also proposes a backdoor approach to changing license qualifications for boat owners in the crab fisheries. I oppose the retroactive changes in the License Limitation Plan and I also oppose this Business Plan for the proposed buyback of licenses for the crab fisheries for many of the same reasons.

My primary objection to the proposed License Buyback Plan for the crab fisheries is that rather than focusing on the primary stated objective (to retire the most effort at the least cost in the minimum time) in a manner which would treat all participants equally, the group immediately focuses in a discriminatory manner on a minority of crab boat owners who have pursued other opportunities during the past 2-3 years. This group has proposed another new set of qualification requirements requiring a landing between December 31, 1994 and September 29, 1997 for the Buyback Program. This new qualification time period is defined by the crab group as the "participation and dependence period" and to obtain what they define as an "A" License, the vessel must have had a landing within that time period in addition to all the other requirements of the Moratorium, the LLP and the new amendments proposed to the LLP by these same groups.

If a vessel owner fails this last qualification period requirement of the Buyback Plan he receives a "B" License which, by definition, will be virtually worthless and useless.

The predatory intent of the Buyback Plan as a whole, is made obvious by the design of this new qualification period which is creatively defined to exclude the 1994 Bairdi Tanner crab season by one month and the 1997 King Crab season by 6 weeks. It also encompasses a time in the other crab fisheries when the registration levels were at record low levels (see Table 3, page 53 of the "Business Plan"). This new qualification period was purposely created at a time when quotas and prices have been low so that many vessels that had other options simply did not fish crab. The clear intent of this new qualification window is to selectively exclude certain vessels otherwise entitled to crab licenses from the fishery.

Other points and comments which I would like to make are as follows:

1. The drafters of the Plan have devised a scheme to essentially force the "B" license holders to sell at a reduced price because the alternative, by definition of the drafters, is that the "B" license would not only be non-transferable but could only be utilized by the owner of the license when the fleet size was less than 200, which would be extremely unlikely whenever the BSAI King or Tanner crab fisheries are in strong economic and stock size condition. An underlying defect in the Plan is that the drafters somehow have conceived the notion that fishermen who are non-diversified have a greater right to fish than those who are diversified. Not only is this concept unfair but if the objective is to reduce capacity it should be considered that owners of vessels that are diversified and have other opportunities when economic conditions in the crab fisheries are poor is a benefit to the crab fleet as a whole because boats with other opportunities are likely not to fish when the potential rewards are small. Furthermore, developing a crab fleet that is primarily dependent only on crab results in a greater risk of economic hardship to the owners, crews and communities from which they are from than if the fleet is diversified and increases the risk of overcapacity and resulting overfishing in the long term by not having other alternatives to engage in when stock size is down. Dependence on the crab fishery or any other single fishery should be discouraged and diversified fleet management should be encouraged.

2. On page 32 the drafters fail to adequately measure "capacity". The drafters measure capacity as demonstrated ability to catch fish relative to the remainder of the fleet and potential capacity as represented in numbers of vessels eligible to operate in the fisheries. However, a critical third factor was omitted which, again, are the fishing alternatives of diversified license holders. Capacity in the crab fishery measured by 250 boats, all of which are pot boats only, is completely different than a fleet of 250 crab license holders, 25% of which also are trawl license holders, who will be taking advantage of other opportunities during many of the crab fisheries.

3. The drafters argue that those vessel owners that move to more lucrative fisheries are no longer dependent on the BSAI King and Tanner crab fisheries and they should not be allowed to return because it would incur extreme hardship on those who remain. What about the hardship on diversified vessels that lose their investment in the crab fishery? If I elect not to participate in a particular fishery, whether it be the crab fisheries or Yellowfin sole or Bering Sea cod or any other fishery for which I am legally entitled to participate in, it is not because I have chosen to

abandon those fisheries in the future but because I have chosen and probably, just as importantly, I have invested large sums of money to be diversified. Vessels which have previously earned, by participation and investment, diversification in both the crab fisheries and groundfish fisheries should be allowed to move freely within those fisheries as economics and stock conditions dictate. This will benefit not only the vessels concerned but also other vessels participating in both the groundfish and crab fishery because those diversified vessels will most likely not be present in a particular fishery when conditions are depressed because they have other opportunities. Furthermore, investment in diversification deserves protection under law. Combination vessels probably have approximately $250,000 invested in crab equipment alone in addition to substantial amounts in permanent vessel design to facilitate both pot and trawl fishing. None of this have we abandoned nor should it be taken away from us and made virtually worthless by retroactive regulations so that license owners who have not invested in diversification can make more money.

Hopefully, the Council will reject the Business Plan as presented and require resubmittal of a plan drafted in a non-discriminatory manner. The objectives of the plan can still be accomplished even within the same goals as the original drafters which appears to be to end up with a total crab fleet of 240-250 licenses (see page 27 of Plan). If the Council selects the least draconian option in the proposed LLP amendment and requires just one landing in any one year between 1995 and February 7, 1998, and then authorizes a non-discriminatory Buyback Plan, the fleet could still easily be reduced to 250 boats or less which would meet the stated goals of the drafters. The Plan states that the 10 year average revenue from the BSAI King and Tanner crab fisheries was 244.6 million dollars, which would result in an average gross earnings from the crab fisheries per licensed vessel of approximately 1 million dollars each, which should be more than sufficient to expect just from these two fisheries. Most of these crab boats have other opportunities as well including pot fishing cod, other crab species, IFQ halibut and tendering.

The Draft Plan contains some credible information and concepts to accomplish the stated objective. However, I believe the Plan, overall, fails dramatically for the variety of reasons which I have specified. Probably the primary underlying reason that the Plan fails is reflected in an emphasized statement on page 28 of the document which states "the Buyback Program itself represents the best judgement of those seeking to remain in a sustainable fishery. . . . . .". and then takes an approach of forcing people out by classifying them as second class license holders rather than buying them out at fair market value as the title of any "Buyback Plan" suggests. I am a long term participant in the fisheries and so are many others whose best judgements are very much different than those represented in this document. For this Plan to pass the "red face" test it must be redrafted by a more representative and objective group which takes into consideration, equally, all legitimate participants in the crab fishery, which at this late date must, by definition, include all legal recipients of crab licenses under the LLP.

Sincerely,

Fred A. Yeck
President

Vessel buyout complete; 537 permits - gone

GLOUCESTER, MA - It was almost three years ago that John Bullard began traveling up and down the New England coast, talking with industry members to gather ideas for a $2 million pilot program to buy out fishing permits from some of the region's top groundfish producers.

Despite a few flaws, the pilot program was deemed a success. The $2 million was enough to buy out the fishing rights of 11 vessels. As a result, a total of 78 different commercial fishing permits were retired.

At the urging of industry, the National Oceanic and Atmospheric Administration (NOAA) moved forward with the design of a second, expanded buyout program. By August of 1996, the agency was again accepting buyout applications.

Known as the "Fishing Capacity Reduction Initiative," this program has now, too, run its course. The $22.5 million that NOAA dedicated to the program was enough to purchase the fishing rights from 67 more vessels, resulting in the removal of an additional 459 permits.

Combined, the pilot program and the full-scale initiative bought out 537 permits from 78 vessels for a grand total of $24.4 million.

"It got a lot of people out of trouble, preserving their homes and their dignity," said Jim O'Malley of East Coast Fisheries Federation, whose involvement in vessel buyout discussions dates back to well before the first official industry meetings.

"It took a lot of pressure off the fishing grounds and provided some breathing room for those who stayed," he said.

According to Maggie Raymond, spokesperson for the Groundfish Group of Associated Fisheries of Maine, the program actually exceeded many people's expectations.

"I mean, who would have ever guessed that you could buy back 78 fishing vessels with $25 million?" she said.

Altered profile

The impact of the combined programs, however, has left a deep scar on the region, permanently changing the profile of the fleet.

A stunning 53 vessels from Massachusetts are now gone. Maine has lost 21 boats, New Hampshire two, and Rhode Island and New York each lost one. They are all simply gone.

Many of these boats — some of New England's most prominent vessels — produced enormous trips of cod and haddock in their heyday, symbolizing in the minds of many what groundfishing was all about.

Most have been or are about to be scrapped or sunk, the most difficult aspect of the program. Many families have wept over the demolition of their vessels, and the whole industry has shared that sorrow.

In the end, only 10 of the 78 vessels involved in the buyout have been transferred to institutions.

Transferring was not an option in the pilot program, a provision that was changed in the larger scale buyout as a result of industry comments.

But for the 67 vessel owners who accepted the terms of the expanded program, finding acceptable homes for their boats turned out to be easier said than done. Few educational or humanitarian institutions could afford to maintain and crew them.

Government response

Tragic as the buyout has been, many in the industry — starting as early as 1993 — viewed it as a way out, an alternative to bankruptcy during a time when the dire status of groundfish stocks and the recovery effort were beginning to grip the fleet in earnest.

The government responded to the industry's thunderous cries for economic relief and pumped almost $100 million into the Northeast region for fishing industry grants, fishing family assistance centers, loans, the buyout, and a subsidy to launch a health insurance program for fishermen.

Bullard, a former mayor of New Bedford and former spokesman for the New Bedford Seafood Co-op, served as director of NOAA's Office of Sustainable Development and Intergovernmental Affairs during the time these programs were developed.

He was charged with handling the entire assistance package — what NOAA called the Northeast Fisheries Assistance Program — and the cornerstone of it became the buyout.

Bullard moves on

With the buyout now complete, except for a few lingering administrative details, Bullard has moved on. He left Washington on Jan. 23 to become a fellow at the Institute of Politics at the Kennedy School of Government at Harvard University.

The New England Fishery Management Council, which manages groundfish and has painfully watched the downsizing of the fleet under its stewardship, formally thanked Bullard for his efforts in a Feb. 12 letter.

The council acknowledged the inherent sadness behind the buyout, but said, "It provided a humanitarian response to a difficult problem. ... (It) allowed a substantial number of fishermen to leave the industry with a measure of dignity and economic relief that would otherwise have been impossible."

Bullard believes the buyout was successful in part because fishermen helped design it.

But Eliot Hurwitz in the Office of Sustainable Development believes Bullard played a key role, too.

"He was someone who understood and felt what life was like at a very local level," said Hurwitz.

O'Malley added, "The program was well thought out and well run. Bullard did a terrific job."

Latent permits

While some fishermen have complained that captains and owners of bought-out vessels are using the money to get back into the industry by activating latent permits, those who were most actively involved in the design of the program see things differently.

Maggie Raymond said, "The program was never intended to remove individual fishermen from the industry — just permits and boats. It was always understood that the operator of a buyback vessel could, and likely would, continue to fish on a different platform."

Furthermore, said Raymond, "If the buyback did, in fact, cause the activation of a few latent permits, we shouldn't lose sight of the fact that there are still 78 less limited-access groundfish permits."

O'Malley concurred.

"It did exactly what it was supposed to do," he said. "It targeted machines, not people."

Bullard himself was well-aware of the latent permit issue. In fact, he approached the New England council last April and asked if his office should put its remaining $400,000 toward investigating the potential of latent effort. The council never accepted the offer.

Prior to leaving his post with NOAA, the following were Bullard's final public words:

"We remain concerned about the number of groundfish permits that are currently held, but not used, and may become active as the stocks recover. We will continue to make the latent effort problem as visible as possible to ensure that the sacrifice made by fishermen to reduce their effort now are not lost to new effort as stocks recover."

A real problem?

Raymond sees it differently.

"I don't view latent permits as a serious threat," she said. "Rather, I see them as future access to the fishery, which I believe will be desirable when the stocks are rebuilt.

"Given that the government has spent a lot of money removing capacity, it's not likely that access will be opened up anytime in the near future, so it is important to leave the latent permit avenue open," she said.

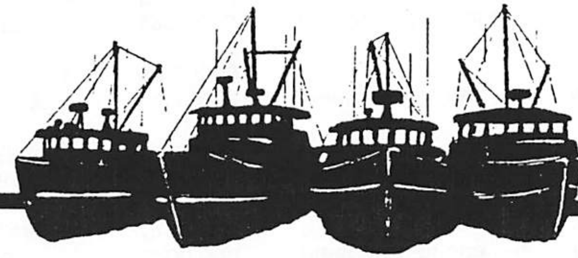
Starting below and continuing on pages 14B-16B is a chart identifying the 78 vessels that participated in either the pilot or expanded buyout program.

Commercial Fisheries News would like to extend its thanks to the National Marine Fisheries Service (NMFS) Northeast Financial Services Office, which supplied the extensive information.

Janice M. Plante

AGENDA C-2(e)
OCTOBER 1998

Vessel Buyout List



Vessel Homeport	Vessel Owner	Length** Gear Type	Bid Disposition	Permit Category	Permits Rendered
Vicki L* Gloucester, MA	David Leveille	60.2' Dragger	$50,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallops, Loligo/butterfish, lobster, mackerel/Illex, and private angling bluefin tuna (7 total)
Mystic Light* Boston, MA	East End Fisheries Corp.	70.1' Dragger	$90,000 Scrapped	Individual days-at-sea	Multispecies, general category scallops, Loligo/butterfish, lobster, mackerel/Illex, and summer flounder (6 total)
Lone Wolf* Chatham, MA	Stuart Wayne Tolley	37' Gillnetter	$80,000 Scrapped	Unlimited	Multispecies, general category scallops, Loligo/butterfish, lobster, and mackerel/Illex (5 total)
Susie K* New Bedford, MA	Kavanah Fisheries Inc.	76' Dragger	$305,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category, scallops, surf clams, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (10 total)
Naomi Bruce III* Gloucester, MA	Naomi Bruce Inc.	69' Gillnetter	$52,000 Sunk	Days-at-sea exempt	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, and mackerel/Illex (8 total)
Anne Rowe* Gloucester, MA	Donald Lowe Jr.	77' Dragger	$190,000 Scrapped	Individual days-at-sea	Multispecies, incidental category bluefin tuna, general category scallop, Loligo/butterfish, lobster, and mackerel/Illex (6 total)
S Pedro* New Bedford, MA	SPR Fishing Corp.	73' Dragger	$175,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, lobster, mackerel/Illex, and summer flounder (8 total)

See VESSEL BUYOUT, page14B

Continued from page 1B

Vessel Homeport	Vessel Owner	Length** Gear Type	Bid Disposition	Permit Category	Permits Rendered
Praia Da Torreira* New Bedford, MA	Manual Maquinhos	75' Dragger	$285,000 Scrapped	Fleet days-at-sea	Multispecies, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (9 total)
Teresa Marie* Gloucester, MA	SSN Corp.	72' Dragger	$400,00 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, anc private angling bluefin tuna (9 total)
Portsmouth Trust* Portsmouth, NH	Max Gunn	38' Gillnetter	$83,000 Scrapped	Unlimited	Multispecies, Loligo/butterfish, lobster, and mackerel/Illex (4 total)
My Three Sons* Hampton Falls, NH	Leiland Stevens	42' Gillnetter	$180,000 Scrapped	Unlimited	Multispecies, general category bluefin tuna, Loligo/butterfish, lobster, mackerel/Illex, and private angling bluefin tuna (6 total)
Lady Laura New Bedford, MA	Lady Laura Fishing Corp.	67.3' Dragger	$170,000 Scraped	Individual days-at-sea	Multispecies, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (8 total)
Sunflower New Bedford, MA	AM Fishing	75.3' Dragger	$300,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (10 total)
Sole Revere, MA	Sole Fisheries Inc.	55.2' Dragger	$133,875 Scrapped	Fleet days-at-sea	Multispecies and lobster (2 total)
Anna Maria Sommerville, MA	Gloucester Anna Maria	60' Dragger	$200,000 Scrapped	Fleet days-at-sea	Multispecies, general category scallop, lobster, and summer flounder (4 total)
Sacred Heart Gloucester, MA	Three Friends Vessel Corp.	81.6' Dragger	$553,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, Loligo/butterfish, lobster, and mackerel/Illex (6 total)
Linda & Ilda New Bedford, MA	Boat C & L Inc.	68.3' Dragger	$450,000 Scrapped	Fleet days-at-sea	Multispecies, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (8 total)
Mantoudi Upton, MA	Chris-Stam	77' Dragger	$202,000 Scrapped	Individual days-at-sea	Multispecies, general category scallop, Loligo/butterfish, lobster, and summer flounder (5 total)
Lady Elaine Rockport, MA	Dennis O'Connor	37' Gillnetter	$91,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, and lobster (7 total)

Vessel Homeport	Vessel Owner	Length** Gear Type	Bid Disposition	P Category	Permits Rendered
Barcelona New Bedford, MA	Barcelona Group	75' Dragger	$180,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total)
Narragansett New Bedford, MA	Independent Fishing Corp.	73.7' Dragger	$395,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, commercial scup, lobster, mackerel/Illex, and summer flounder (10 total)
San Marcos New Bedford, MA	San Marco Inc.	76.4' Dragger	$450,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, commercial scup, lobster, mackerel/Illex, summer flounder, and black sea bass (11 total)
Gale Provincetown, MA	John Vasques	48.6' Dragger	$52,500 Transferred to Intracoastal Waterfolk Ministries, Beaufort, NC	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, Loligo/butterfish, commercial scup, lobster, summer flounder, and black sea bass (8 total)
Lucky Venture New Bedford, MA	Three Friends Fishing Corp.	79.6' Dragger	$300,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, commercial scup, lobster, and summer flounder (8 total)
Lady Francesca Gloucester, MA	Lady Francesca Inc.	65.4' Dragger	$110,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, lobster, and summer flounder (6 total)
Santo Antonio Fairhaven, MA	Santo Antonio Fishing Corp.	75.3' Dragger	$277,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, commercial scup, lobster, mackerel/Illex, and summer flounder (10 total)
Sarah Jean Newbury, MA	Frederic Littlefield	44.8' Gillnetter	$195,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, lobster, and mackerel/Illex (4 total)
Virginia Gentleman Gloucester, MA	S. Antonio Corp.	81.6' Dragger	$494,452 Scrapped	Individual days-at-sea	Multispecies, general category scallop, general category scallop, Loligo/butterfish, lobster, mackerel/Illex, and summer flounder (7 total)
Jenny-Christina New Bedford, MA	Silva & Teixeira Fishing Corp.	72.7' Dragger	$450,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total)
Jacqueline and Maria Gloucester, MA	GPN Corporation	81.6' Dragger	$395,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (7 total)
Sea Lust Chatham, MA	Stuart Tolley	41' Gillnetter	$210,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, lobster, mackerel/Illex, and private angling bluefin tuna (6 total)
Against Odds Chatham, MA	Peter Taylor	35' Gillnetter	$200,000 Transferred to Harwich harbormaster, Harwich, MA	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and private angling bluefin tuna (9 total)
Two Sons Gloucester, MA	J. R. Corp.	77' Dragger	$400,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, Loligo/butterfish, lobster, and mackerel/Illex (6 total)

Vessel Homeport	Vessel Owner	Length** Gear Type	Bid Disposition	Permit Category	Permits Rendered
Bagatell New Bedford, MA	Didriksen Fishing	80' Dragger	$575,000 Transferred to Maritime Discovery Center, Rochester, NY	Combination	Multispecies, general category bluefin tuna, limited-access scallop, Loligo/butterfish, lobster, mackerel/Illex, and summer flounder (7 total)
Sea Holly Harwich, MA	Mark Leach	35' Gillnetter	$200,000 Scrapped	Fleet days-at-sea	Multispecies, general category sea scallop, surf clam, and lobster (4 total)
Chain Falmouth, MA	Sleepy Hollow Fisheries	71.4' Dragger	$440,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (10 total)
Carevelle Falmouth, MA	Sheena Corporation	83' Dragger	$360,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total)
Valkyrie Fairhaven, MA	Jacobsen Fisheries	91.4' Dragger	$425,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (10 total)
Miss Trish Gloucester, MA	Russo Fishing	67' Dragger	$540,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, and mackerel/Illex (8 total)
Cristen Yarmouthport, MA	Walter Tolley Jr.	36.7' Gillnetter	$145,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, Loligo/butterfish, commercial scup, lobster, mackerel/Illex, and summer flounder (8 total)
Punkin Yarmouthport, MA	The Tolleys	40.1' Gillnetter	$185,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, Loligo/butterfish, commercial scup, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (9 total)
Corey Pride Gloucester, MA	All Trawl Inc.	81.2 Dragger	$435,000 Transferred to JC Ministries, Bothell, WA	Combination	Multispecies, general category bluefin tuna, limited-access scallop, surf clam, Loligo/butterfish, ocean quahog, commercial scup, mackerel/Illex, lobster, and summer flounder (10 total)
Hunter Gloucester, MA	Gussi B	50' Dragger	$75,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin, general category scallop, lobster, private angling bluefin tuna, and charter lobster (6 total)
Portugal New Bedford, MA	Antonio Dos Santos Fishing Corp.	73.6' Dragger	$500,000 Scrapped	Fleet days-at-sea	Multispecies, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounde[illegible] total)

Vessel Homeport	Vessel Owner	Length** Gear Type	Bid Disposition	Permit Category	Permits Rendered
Libby II New Bedford, MA	S&N Fisheries	72.8' Dragger	$275,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (10 total)
Senhora de Boa Viagem New Bedford, MA	Boa Viagem Fishing	70.3' Dragger	$300,000 Scrapped	Fleet days-at-sea	Multispecies, general category tuna, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total?)
Angela W New Bedford, MA	Walsh Fishing	63.6' Dragger	$80,000 Sunk	Fleet days-at-sea	Multispecies, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (8 total)
Tracey Ann Wakefield, MA	Dwyer Fisheries Corp.	57.2' Dragger	$55,000 Sunk	Individual days-at-sea	Multispecies, general category tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total)
Cathy C Gloucester, MA	Peter & Josephine Inc.	67.6' Dragger	$260,000 Scrapped	Individual days-at-sea	Multispecies, general category tuna, lobster, mackerel/Illex, summer flounder, and private angling bluefin tuna (6 total)
Thunderpussy Chatham, MA	Roger Horne	42' Gillnetter	$90,500 Scrapped	Individual days-at-sea	Multispecies, general category tuna, general category scallop, and surf clam (4 total).
Captain Sam Cohassett, MA	South Shore Trawling	75.7' Dragger	$517,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total)
Katie K Falmouth, MA	Kavanagh Fisheries	72.1' Dragger	$165,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total)
Niagara Fall New Bedford, MA	Boat Niagara Falls Inc.	81.6' Dragger	$750,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total)
Ocean Spray New Bedford, MA	Esther Fishing	73.2' Dragger	$150,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (9 total)
Caroline Murray Hampton Falls, NH	Leiland Stevens	45' Gillnetter	$235,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, and lobster (4 total)
Golden Eagle Brooklyn, NY	Trawler Golden Eagle	72.1' Dragger	$175,000 Sunk	Fleet days-at-sea	Multispecies, general category scallop, surf clam, Loligo/butterfish, ocean quahog, and commercial scup (6 total)
Mandy Ray Newport, RI	Mandy Ray Fisheries	105' Dragger	$1,000,000 Transferred to Great Waterway Institute, Rochester, NY	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, commercial scup, lobster, mackerel/Illex, and summer flounder (9 total)
High Chaparral Portland, ME	High Chaparral Inc.	77' Dragger	$400,000 Scrapped	Individual days-at-sea	Multispecies and lobster (2 total)

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Continued from previous page

Vessel Homeport	Vessel Owner	Length** Gear Type	Bid Disposition	Permit Category	Permits Rendered
Harriet Stone Phippsburg, ME	Lewis Moore	63.5' Dragger	$200,000 Sunk	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, and surf clam (4 total)
Joker Boothbay, ME	Robert Brewer	35' Gillnetter	$70,000 Scrapped	Individual days-at-sea	Multispecies, general category scallop, and lobster (3 total)
Fairtry Portland, ME	Fairtry Inc.	76.8' Dragger	$700,000 Transferred to University of Minnesota, Minneapolis, MN	Fleet days-at-sea	Multispecies, general category tuna, general category scallop, lobster, and mackerel/Illex (5 total)
Scottish Pride Port Clyde, ME	RO-JO Inc.	40.5' Gillnetter	$140,000 Sunk	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, lobster, mackerel/Illex, private angling bluefin tuna, and shark (7 total)
Crown Royal New Castle, ME	McFish	73.7' Dragger	$233,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, lobster, mackerel/Illex, and summer flounder (7 total)
Alexander W Portland, ME	Atlantic Resource Corp.	71.3' Dragger	$685,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, and lobster (4 total)
Intrepid Portland, ME	North Atlantic Group Inc.	71.3' Dragger	$595,000 Transferred to Angolan Embassy, Angola, Africa	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, Loligo/butterfish, mackerel/Illex, and private angling bluefin tuna (6 total)
Danielle Rose Ogunquit, ME	Steven Perkins	46.9' Dragger	$160,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, Loligo/butterfish, lobster, and mackerel/Illex (7 total)
Celtic Pride II Portland, ME	Celtic Pride II	82.1' Dragger	$400,000 Scrapped	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, ocean quahog, and lobster (6 total)
Ben & Amanda Southport, ME	Ernest Stockwell	38.1' Dragger	$115,000 Transferred to Schooner Inc., Long Island, NY	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, ocean quahog, lobster, private angling bluefin tuna, and shark (7 total)
January Cold Portland, ME	Harold F. Seal Inc.	50.9' Gillnetter	$200,000 Scrapped	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, ocean quahog, and lobster (6 total)
Teresa Marie III Portland, ME	Teresa Marie III Inc.	74' Dragger	$850,000 Scrapped	Fleet days-at-sea	Multispecies, general category scallop, Loligo/butterfish, lobster, mackerel/Illex and summer flounder (6 total)

Vessel Homeport	Vessel Owner	Length** Gear Type	Bid Disposition	Permit Category	Permits Rendered
Teresa Marie IV Portland, ME	James Odlin	81.7' Dragger	$790,000 Scrapped	Fleet days-at-sea	Multispecies, general category scallop, Loligo/butterfish, lobster, and summer flounder (5 total)
Rams Tenant Harbor, ME	Hale and Ira Miller	73.1' Dragger	$255,000 Scrapped	Fleet days-at-sea	Multispecies, general category scallop, surf clam, lobster, and mackerel/Illex (5 total)
Haley's Comet Brooksville, ME	John David Cousins	44.8' Gillnetter	$250,000 Transferred to Batelle Ocean Services, Duxbury, MA	Individual days-at-sea	Multispecies, general category scallop, and ocean quahog (3 total)
Sarena H Cape Elizabeth, ME	Dorothy G Inc.	37.7' Gillnetter	$100,000 Scrapped	Individual days-at-sea	Multispecies, general category scallop, surf clam, and ocean quahog (4 total)
Prowler Orrs Island, ME	New Meadows Trawlers Inc.	70' Dragger	$941,000 Scrapped	Fleet days-at-sea	Multispecies, general category scallop, Loligo/butterfish, ocean quahog, lobster, mackerel/Illex, and summer flounder (7 total)
Scotsman So. Portland, ME	James Homstead	50.9' Dragger Gillnetter	$250,000 Transferred to International Marine Research Institute, Palm Bay, FL	Individual days-at-sea	Multispecies, general category bluefin tuna, general category scallop, lobster, shark, and swordfish (6 total)
Ami Rae Cape Elizabeth, ME	Gulf Crest Trawlers Inc.	53.3' Dragger	$300,000 Sunk	Fleet days-at-sea	Multispecies, general category bluefin tuna, general category scallop, surf clam, and Loligo/butterfish (5 total)
Caitlin Portland, ME	Terry Hopkins Jr.	74' Dragger	$800,000 Scrapped	Fleet days-at-sea	Multispecies, Loligo/butterfish, lobster, mackerel/Illex, and summer flounder (5 total)

*Pilot Program **Vessel lengths obtained by NMFS from US Coast Guard data base.
Source: National Marine Fisheries Service, Northeast Financial Services Office.

COMMENT

Compliance of the Draft Business Plan for the Proposed Buyback of Bering Sea/Aleutian Islands Crab Licenses with the Magnuson-Stevens Fishery Conservation and Management Act and Title XI, Merchant Marine Act, 1936

September 15, 1998

I. Scope and Purpose

This comment, provided on behalf of the Capacity Reduction and Buyback ("CRAB") Group, addresses compliance of the "Draft Business Plan, Proposed Buyback of Licenses for Crab Fisheries of the Bering Sea/Aleutian Islands" ("Business Plan"), June 5, 1998, with the Magnuson-Stevens Fishery Conservation and Management Act, P.L. 94-265 (16 U.S.C. 1801, *et seq.*) ("Act") and Title XI, Merchant Marine Act, 1936 ("MMA") (46 U.S.C. App. 1271, *et seq.*). For the purposes of this comment, the terms, "Business Plan" and "Buyback", are used interchangeably, unless indicated otherwise, either expressly or by context.

II. Overview of Legal Requirements of the Act and the MMA

A. Requirements for Buybacks

Section 312 of the Act establishes substantive and procedural requirements that are particular to buybacks of vessels and fishing licenses.[1] 16 U.S.C. 1861a. The MMA

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[1] A particularly useful description of these and other, related statutory provisions, is found in the "Summary of Manager's Amendment to S.39 [Sustainable Fisheries Act]" ("Summary"). The Summary was included in the record of the Senate Floor debate on S. 39, by unanimous consent, at the initiative of Senator Ted Stevens, principal sponsor of the legislation, and chairman of the Senate subcommittee of jurisdiction.

> The [manager's] amendment authorizes the Secretary [of Commerce] to implement a vessel and/or permit buyout program at the request of a Council (or Governor for a fishery under a State's authority) if adequate steps are taken to ensure that vessels and permits are removed permanently and the program is needed for conservation and management. Eligible funding sources could

provides legal requirements applicable to debt obligations issued in support of buybacks. 46 U.S.C. App. 1279f, g.

B. Limited Access Criteria

The Act requires that certain factors be taken into account in the establishment of limited access systems. 16 U.S.C. 1853(b)(6). Buybacks limit entry. 16 U.S.C. 1861a(b)(1)(B)(i). As reflected in the Business Plan, the Buyback would provide new limits on entry into Bering Sea/Aleution Islands ("BSAI") crab fisheries.

C. National Standards, Other Provisions of the Act, and other Applicable Law

The Act does not expressly provide that buybacks and their implementing regulations must be consistent with its National Standards, its other provisions, and other applicable law. However, the Act requires that buybacks be consistent with the applicable fishery management plans ("FMPs"), and that FMPs and implementing regulations be consistent with the National Standards, other provisions of the Act, and other applicable law.[2] 16 U.S.C. 1861a(b)(1)(B), 1851(a), 1853(a)(1)(C).

It will be necessary to amend the Fishery Management Plan for King and Tanner of the Bering Sea/Aleutian Islands ("Crab FMP") and its implementing regulations to

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include Saltonstall-Kennedy funds, funds appropriated for the purpose of the buyout section, funds provided by an industry fee system (which cannot exceed 5 percent of the ex-vessel value of fish harvested), of [sic] funds provided by a State or other source. The amendment authorizes the Secretary to provide direct loan obligations of up to $100 million per fishery to finance buyout programs, which must be paid back over a twenty year period.[1] Any catch history must be forfeited by the owner of a vessel or permit that is purchased under a buyout program. [*Congressional Record*, September 19, 1996, at S10909.]

[2] The Secretary of Commerce may approve an FMP or amendment thereto only if he or she determines it to be consistent with the Act and other applicable law. 16 U.S.C. 1854(a)(1)(A). He or she may approve

conform to the Buyback.[3] Consequential amendments to the FMP for Bering Sea/Aleutian Islands the Groundfish of the Bering Sea/Aleutian Islands ("Groundfish FMP") and its implementing regulations will also be necessary to provide for severability of crab and groundfish licenses for the purpose of the Buyback.

III. Secretarial Discretion

It is well established that the Secretary of Commerce ("Secretary") has broad discretion in administering the Act.[4] Accordingly, actions by the Secretary pursuant to the Act are subject to extremely limited judicial review.[5] *Associated Fisheries of Maine, Inc. v. Daley*, 127 F.3d 104, 109-110 (1st Cir. 1997); *Alliance Against IFQs v. Brown*, 84 F.3d 343, 345, 349-350 (9th Cir. 1996), *cert. den.*, 117 S.C. 1467, L.Ed.2d 681 (1997); *C&W Fish Co. v. Fox*, 931 F.2d 1556, 1562; *Washington Crab Producers, Inc. v. Mosbacher*, 924 F.2d 1438, 1441 (9th Cir. 1991); *Alaska Factory Trawlers Ass'n v. Baldridge [sic]*, 831 F.2d 1456, 1460 (9th Cir. 1987); *State of Maine v. Kreps*, 563 F.2d 1052, 1055 (1st Cir. 1977); *Southeastern Fisheries Ass'n, Inc. v. Mosbacher*, 773 F. Supp. 435, 439 (D.D.C. 1991); *National Fisheries Institute v. Mosbacher*, 732 F. Supp. 210 (D.D.C. 1990); *Associated Vessels Services, Inc. v. Verity*, 688 F. Supp. 13, 17

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implementing regulations only if he or she determines that they are consistent with the FMP to which they relate and with the Act and other applicable law. 16 U.S.C. 1854(b)(1).

[3] Fishery Management Plan for Commercial King and Tanner Crab Fisheries of the Bering Sea/Aleutian Islands, approved by the Commerce Department on June 2, 1989, as amended ("Crab FMP"). *See* Summary of Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan, Revised February 14, 1994 ("Summary") and State/Federal Action Plan for Management of Commercial King and Tanner Crab Fisheries, October, 1993; Draft Environmental Assessment/Regulatory Impact Review for Amendment 7 to the Fishery Management Plan for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, May 6, 1998.

[4] The appropriate standard of review, the "arbitrary and capricious test", pursuant to section 706(2)(A) of the Administrative Procedures Act ("APA") is found in the Act itself. 16 U.S.C. 1855(f)(1).

[5] Regulations, not fishery management plans and plan amendments, are subject to judicial review. *Southeastern Fisheries Ass'n, Inc. v. Mosbacher*, (D.D.C. 1991), 773 F. Supp. 435, 439.

(D.D.C. 1988); *Louisiana v. Baldridge*, 538 F. Supp. 625, 628 (E.D. La. 1982); *Pacific Coast Fed,n v. Secretary of* Commerce, 494 F. Supp. 626, 628 (N.D. Cal. 1980).

In *Alliance Against IFQs v. Brown, supra,* the Court stated:

> Where we review regulations promulgated by the Secretary of Commerce under the Magnuson [-Stevens] Act, our only function is to determine whether the Secretary 'has considered the relevant factors and articulated a rational connection between the facts found and the choice made.' [*Washington Crab Producers, Inc. v. Mosbacher*, 924 F.2d 1438 (9th Cir. 1990), at 1440-41]... We determine only
> if the Secretary acted in an arbitrary and capricious manner in promulgating such regulations. *Id.* at 1441. *See also* 16 U.S.C. sec. 1855(b)(1)(B); 5 U.S.C. sec. 706(2)(A)-(D). We cannot substitute our judgment of what might be a better regulatory scheme, or overturn a regulation because we disagree with it, if the Secretary's reasons for adopting it were not arbitrary and capricious.

84 F.3d at 345.

In *Associated Fisheries of Maine, Inc. v. Daley, supra,* the Court stated:

> The Magnuson[-Stevens] Act incorporates the familiar standard of review associated with the Administrative Procedure Act (APA). *See* 16 U.S.C. sec. 1855(b). Where the APA standard obtains, a court may set aside an administrative action only if that action is arbitrary, capricious, or otherwise contrary to law. *See* 5 U.S.C. sec. 706(2)(A)-(D). Because the APA standard affords great deference to agency decisionmaking [sic] and because the Secretary's action is presumed valid, judicial review, even at the summary judgment stage, is narrow. [Citations omitted.] Consequently, our brief—like that of the district court—is only to determine whether the Secretary's decision to promulgate the fishery regulation was consonant with his statutory powers, reasoned, and supported by substantial evidence in the record. *See Alliance Against IFQs v. Brown*....[Citations omitted.]
>
> An agency rule is arbitrary and capricious, if the agency lacks a rational basis for adopting it—for example, if the agency relied on improper factors, failed to consider pertinent aspects of the problem, offered a rationale contradicting the evidence before it, or reached a conclusion so implausible that it cannot be attributed to a difference of opinion or the application of agency expertise. [Citations omitted.]

127 F.3d 109.

> Having carefully reviewed the record, we cannot say that the Secretary exercised his discretion in an irrational, mindless, or whimsical manner.

127 F.3d 110.

> Whether or not we, if writing on a pristine page, would have reached the same set of conclusions is not the issue. What matters is that the administrative judgment, right or wrong, derives from the record, possesses a rational basis, and evinces no mistake of law. Consequently, it merits our approbation. *See State Farm*, 463 U.S. at 43, 103 S.Ct. at 2866-67; *Kreps*, 563 F.2d at 1056.

127 F.3d 111.

In *National Fisheries Institute v. Mosbacher, supra,* the Court stated:

> It is especially appropriate for the Court to defer to the expertise and experience of those individuals and entities—the Secretary, the Councils, and their advisors—whom the Act charges with making difficult policy judgments and choosing appropriate conservation and management measures based on their evaluations of the relevant quantitative and qualitative factors. [Citations omitted.]

732 F. Supp. 223.

IV. Determination of Compliance with Section 312 of the Act

It is noted that draft regulations and a draft advance notice of proposed rulemaking have been prepared for initiation of the rulemaking process to implement section 312(b)-(d) of the Act and the related sections of Title XI, MMA.[6] The Buyback and its implementing regulations will be subject to review for compliance with the final rule applying to those statutory provisions.

[6] Staff Draft ANPR, Website buyback.htm@Kingfish.ssp.nmfs.gov; draft regulations dated May 4, 1998, as amended, May 26, 1998.

A. Requisite Council Request for the Buyback

The Secretary must receive a request for establishment of the Buyback from the fishery management council (or State) having jurisdiction over the applicable fishery[7]. Section 312(b)(1). The North Pacific Fishery Management Council ("Council") made the requisite request in relation to the proposed Buyback by letter dated October 10, 1997. In its letter dated April 16, 1998, the Department of Commerce replied, "We regard... [the Council's] letter [dated October 10, 1997] as a statutory request for a buyback in ... [the Bering Sea/Aleutian Islands crab] fishery."

B. Substantive Requirements for the Buyback

If the Secretary decides to respond affirmatively to a council's request, he or she must determine that—

1. the buyback is—
    a. necessary to—
        (1) prevent or end overfishing;
        (2) rebuild stocks of fish; or
        (3) achieve measurable and significant improvements in the conservation and management of the fishery (section 312(b)(1)(A));
    b. consistent with the fishery management plan in effect for such fishery (section 312(b)(1)(B))[8];
    c. cost effective (section 312(b)(1)(C)); and
    d. capable of repaying any debt obligation incurred under section 1111 of title XI of the MMA (*id.*); and
2. the relevant FMP—
    a. will prevent replacement of fishing capacity removed by the buyback through—
        (1) a moratorium on new entrants;
        (2) restrictions on vessel upgrades; and
        (3) other effort control measures—

[7] A State may also make a request as provided by the Act.
[8] The cited section also refers to consistency with a State plan or program where appropriate.

taking into account the full potential fishing capacity of the fleet (section 312(b)(1)(B)(i)); and

b. establishes—

(1) a specified allowable catch;
(2) a target allowable catch; or
(3) other measures—
that trigger—
(a) closure of the fishery; or
(b) adjustments to reduce catch (section 312(b)(1)(B)(ii)).

The Business Plan notes that, due to excess capacity, harvests in the 1996/1997 and 1997/1998 BSAI red king crab seasons exceeded guideline harvest levels ("GHLs"). For the same reason, there is also a risk of exceeding GHLs in other BSAI crab fisheries. The Buyback is necessary to reduce capacity, in order to prevent overfishing of red king crab, rebuild stocks of BSAI king and Tanner crab, and otherwise achieve measurable and significant improvements in the conservation and management of the affected fisheries. Business Plan at 12.

As shown, below, the Buyback is consistent with the management objectives of the Crab FMP. Amendments to the Crab FMP and its implementing regulations will assure full consistency with the Buyback. As noted above, consequential amendments will be required for the Groundfish FMP and its implementing regulations. The approval of separately proposed amendments to the License Limitation Program ("LLP"), which are due for final Council action in October 1998, would provide for more current qualification dates and thus reduce latent capacity. This would, in and of itself, be helpful in achieving improved conservation, safety, and economic conditions in the BSAI crab fisheries. It would also facilitate the Buyback and, thus, the achievement of sustainability in the affected fisheries, by reducing or eliminating the need to buyback latent capacity.

The Business Plan demonstrates cost effectiveness. That is, the economic benefits to the affected fleet and fishing communities will outweigh the costs of the buyback, including fees to repay the Buyback loan. Buyback fees on participants in the fisheries will be a maximum of 2.5% of the ex vessel value of the landings. Business Plan at 3, 17, 25. Fleet revenues, alone, are projected to increase from 2.5% to 15% as a result of the Buyback. For reasons of improved conservation and safety, as well, the benefits of the Buyback would outweigh its costs. Business Plan at 26-27. *See* detailed discussion, below.

The Business Plan also shows that the proposed fee system will provide loan repayment, as required by the Act and Title XI, MMA, and will be economically supportable by the affected vessel owners. Business Plan at 23

The LLP will prevent replacement of fishing capacity removed by the Buyback. This will be achieved by precluding new entrants, restricting vessel upgrades, and providing for other effort control measures. Business Plan at 8. The Crab FMP and federal and State regulations will, as they do at present, specify allowable catches and the mechanisms by which the fisheries are closed. *Id.*

It is expected that the Secretary will make the requisite determinations in accordance with the foregoing facts.

The Act provides that the objective of a buyback must be to obtain the maximum sustained reduction in fishing capacity, at the least cost, and in a minimum period of time. Section 312(b)(2). The objective of the Buyback complies with this requirement. The maximum sustained reduction is 10%-30%, leaving 250-195 vessels in the Buyback fisheries at the end of the loan repayment period. (The minimum acceptable reduction of active capacity is set at 10%.) Business Plan at 4, 25, 34, 37. The least cost is established to be $60 million. Business Plan at 3, 13. If the two classes of licenses are necessary, then the minimum period of time is the 20-year loan period, because the B Licenses will not be retired, until then). If, as a result of amendments to the LLP, only one class of license is necessary, then the minimum period of time will be that required to complete the purchase and permanent retirement of licenses in accordance with the Buyback procedures. The projected date for this is January 1, 2000, the date on which the LLP is fully implemented. Business Plan at 3, 12.

C. Eligibility for, and Conditions of, Buyback Payments

The Act provides that, to achieve the objective of a buyback, the Secretary is authorized to pay—

1. the owner of a fishing vessel (section 312(b)(2)(A)) if—
    a. the vessel is—
        (1) scrapped (section 312(b)(2)(A)(i)); or
        (2) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that—
            (a) permanently prohibit; and
            (b) effectively prevent—
            its use in fishing (section 312(b)(2)(A)(ii));
    b. the license[9] authorizing the participation of the vessel in the fishery is surrendered for permanent revocation (*id.*); and
    c. the owner relinquishes any claim associated with the
        (1) vessel; and
        (2) license—
        that could qualify such owner for any—
        (1) present; or
        (2) future—
        limited access system license in the fishery for which a buyback is established (*id.*); or
2. the holder of a license authorizing participation in the fishery, if—
    a. such license is surrendered for permanent revocation; and

[9] The term used in the Act is "permit".

b. such holder relinquishes any claim associated with—
   (1) the license; and
   (2) vessel—
   used to harvest fishery resources under the license that could qualify such holder for any—
      (a) present; or
      (b) future—
      limited access system license in the fishery for which a buyback is established (section 312(b)(2)(B)).

The Buyback proposes that the payment would be made by the Secretary to license holders who surrender, for permanent revocation, their licenses authorizing participation of vessels in the specified BSAIf crab fisheries, and relinquish any claims associated with such licenses and vessels used to harvest fishery resources under those licenses that could qualify such holders for any present or future limited access license in those specified fisheries. Business Plan at 2.

D. Required Consultations

Secretarial consultations are required, as appropriate, throughout the development and implementation of a buyback, with—

1. the appropriate council;
2. Federal agencies;
3. State authorities;
4. regional authorities;
5. affected fishing communities (as defined in the Act);
6. participants in the fishery;
7. conservation organizations; and
8. other interested parties (section 312(b)(4)).

The process of consultation on the Buyback began on April 24, 1998, at a regular meeting of the Council. Consultations with participants in the fishery (the CRAB Group) began on May 20, 1998, at the National Marine Fisheries Service ("NMFS") Headquarters. Consultations have also included detailed interchanges between CRAB

Group representatives, Council staff, and NMFS officials concerning the draft Business Plan and the procedural and substantive requirements applicable to the Buyback. It is expected that the Secretary will continue with, and complete, the required consultations.

E. Authorized Sources of Funding

The Act provides that buybacks may be funded by any combination of amounts—

1. available under section 2(b)(1)(A)(iv) of the Saltonstall-Kennedy Act (section 312(c)(1)(A))[10];
2. appropriated for the purposes of implementing fishing capacity reduction programs under the Act (section 312(c)(1)(B));
3. provided—
   a. from an industry fee system established under section 312(d); and
   b. in accordance with section 1111 of Title XI of the MMA (section 312(c)(1)(C)); or
4. provided from—
   a. any State source;
   b. any other public sources;
   c. private organizations; or
   d. non-profit organizations (section 312(c)(1)(D)).

The Buyback provides for funding by an industry fee system and federal loan in accordance with section 1111 of Title XI of the MMA.[11] Business Plan at 17, 24-25.

F. Required Referendum on an Industry Fee System

The Act provides that, if an industry fee system (section 312(d)) is necessary to fund a buyback, the Secretary may conduct an industry referendum, but only if so requested by the Council. Section 312(d)(1)(A).

Prior to the referendum, the Secretary must—

[10] Section 116(c) of P.L. 104-297 amends the Saltonstall-Kennedy Act, accordingly.
[11] The Act provides, "[f]unds for a buyback, including any industry fees, must be paid into the fishing capacity reduction fund established under section 1111 of title XI of the MMA (section 312(c)(2))." This is a ministerial agency function which need not be reflected in the Business Plan.

1. consult with the Council to—
   a. identify, to the extent practicable; and
   b. notify—

   all license and vessel owners who would be affected by a buyback (section 312(d)(1)(A)(i)); and
2. make available to such owners information about the industry fee system describing—
   a. the schedule, procedures, and eligibility requirements for the referendum;
   b. the proposed buyback; and
   c. theamount,duration, and any other terms and conditions of the fee system (section 312(d)(1)(A)(ii)).

The industry fee system shall be considered approved, if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting. Section 312(d)(1)(B). Of course, the Business Plan would be implemented only if the Buyback is approved by the required referendum (and meets all other procedural and substantive legal requirements). An industry survey ("Survey"), upon which the Business Plan relies, was conducted in anticipation of the referendum.[12]

G. Fees on Industry Participants

The Act provides that fees for a buyback shall—

1. be determined by the Secretary; and
2. be adjusted from time to time by the Secretary as he considers necessary—

   to ensure the availability of sufficient funds to repay debt obligations (section 312(d)(2)(A))[13];
3. not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the buyback is established (section 312(d)(2)(B));

[12] "Survey of Vessel Owners for the Crab Group, Inc.", May 1997, revised November 1997, The McDowell Group, Juneau, Alaska.

[13] It is self-evident that applicable law requires that the fees be fair and reasonable, and that they be supported by the administrative record.

4. be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchaser to the Secretary in such manner as the Secretary may establish (section 312(d)(2)(C)); and
5. be in effect only until such time as the debt obligation has been fully paid (section 312(d)(2)(D)).[14]

The Business Plan for the Buyback sets out a proposed industry fee system, which is necessary to fund the purchase of licenses. Fees would be subject to adjustment, but would not exceed 5% of the ex-vessel value of all fish harvested from the affected Bering Sea/Aleutian Islands crab fisheries. Business Plan at 3, 17, 25. Fees would be deducted by the first ex-vessel fish purchaser. Business Plan at 17. The fee system for the Buyback would be in effect only until such time as the Buyback loan has been fully repaid. *Id.*

It is expected that the Council will request the industry referendum, that the Secretary will comply with the procedural and substantive requirements relating to the fee system and referendum, and that the Secretary will propose for the referendum the fee system set out in the Business Plan. In view of the Survey and a financial analysis provided to the Council, each of which the Business Plan takes into account, it is reasonable to expect that the industry referendum will provide the required two-thirds majority in favor of the Buyback.[15] It is anticipated that the Secretary will, thereupon, adopt the fee structure proposed in the Business Plan.

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[14] The Act further provides that, consistent with the industry fee system, the Secretary is authorized to establish such a system to—

1. fund the buyback; and
2. repay debt obligations incurred pursuant to section 1111 of title XI of the MMA (section 312(d)(2)).

[15] Survey, *supra.* A financial analysis was provided by Peat Marwick and presented to the Council on September 23, 1997.

H. Required Implementation Plan

The Act provides that the Secretary, in consultation with the appropriate council[16] and other interested parties, shall prepare, and publish in the Federal Register for a 60-day public comment period, an implementation plan, including proposed regulations for a buyback. Section 312(e)(1). The implementation plan shall—

1. define criteria for determining—
   a. types; and
   b. numbers of vessels—

   that are eligible for participation in the buyback, taking into account—
      (1) characteristics of the fisheries;
      (2) requirements of the fishery management plans;
      (3) needs of fishing communities; and
      (4) the need to minimize buyback costs (section 312(e)(1)(A)); and
2. establish procedures for buyback participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions the Secretary deems to be reasonably necessary to meet the goals of the buyback (section 312(e)(1)(B)).

N.B. Participation in a buyback shall be voluntary, but the Secretary must ensure compliance by all who do participate. Section 312(b)(3).

During the 60-day public comment period—

1. the Secretary must conduct a public hearing in each State affected by the buyback (section 312(e)(2)(A)); and
2. the appropriate council[17] must submit its comments and recommendations, if any, regarding—
   a. the implementation plan; and
   b. the regulations (section 312(e)(2)(B)).

Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate council,[18] must—

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[16] The cited section also refers to a State.
[17] The cited section also refers to a State.

1. analyze the public comments; and
2. publish in the Federal Register—
    a. the final implementation plan for the buyback; and
    b. regulations for the buyback (section 312(e)(3)).

Thus, information required for development of the implementation plan may be drawn from a number of sources. These include the Business Plan, the Crab FMP, the LLP and supporting analyses, and the analyses of the Buyback required by Acts of Congress and Executive Orders. It is expected that the Secretary will adopt the procedures for participation in the Buyback that are proposed in the Business Plan. It is further expected that the Secretary and the Council will comply with the requirements relating to the development of implementing regulations for the Buyback.

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[18] The cited section also refers to a State.

V. Determination of Compliance with Requirements of the National Standards[19]

A. Overview of the Guidelines and the National Standards

The Guidelines provide:

> The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been, and will be, applied under these principles...FMPs that are in substantial compliance with the guidelines, the Magnuson-Stevens Act, and other applicable law must be approved.
>
> 50 C.F.R. 600.305(a)(3).

Nevertheless, the interpretation and application of the Guidelines are subject to considerable latitude. A Legal Opinion of the General Counsel of the National Oceanic and Atmospheric Administration ("NOAA") is instructive:

> The national standard guidelines are intended as general statements of policy, and not binding rules. The guidelines leave the Councils wide discretion in preparing

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[19] Notably, the Guidelines provide definitions of key terms for determining compliance. "Must is used, instead of 'shall', to denote an obligation to act; it is used primarily when referring to requirements of the Magnuson-Stevens Act, the logical extension thereof, or of other applicable law." 50 C.F.R. 600.305(c)(1). "Should is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Magnuson-Stevens Act, and is a factor reviewers will look for in evaluating [an]...FMP." 50 C.F.R. 600.305(c)(3).

The notice of proposed rulemaking for the Guidelines implementing amendments to the National Standards by the Sustainable Fisheries Act, P.L. 104-297, states, among other things:

> The new and revised National Standards apply to all FMPs and implementing regulations, existing and future. However, as Congress recognized by allowing the Councils 2 years from enactment [of the Sustainable Fisheries Act] (i.e., until October 11, 1998), to comply with the related new requirements in section 303(a) [required provisions of fishery management plans], it will take considerable time and effort to bring all FMPs into compliance with the Magnuson-Stevens Act. For example, national standard 9 requires that management measures minimize bycatch, but section 303(a)(11), which states exactly the same requirement, need not be fully implemented in all FMPs until October 11, 1998. NMFS will therefore not expect full compliance with National Standard 9 until that date. Once issued in final, NMFS will use these guidelines to review all new FMPs and amendments to determine whether they comply with the new and revised National Standards. The Councils should review existing FMPs for compliance with the new and revised National Standards and submit necessary amendments by October 11, 1998.[19]
>
> 62 F.R. 41907, August 4, 1997.

> FMPs, and the Secretary has similar latitude in the application of the guidelines to individual cases....

Opinion No. 96, Office of the General Counsel, NOAA, July 14, 1982 at 1.

In its Reply Brief in *Washington Trollers Association v. Kreps*, 466 F. Supp. 309 (W.D. Wash. 1979), the United States Department of Justice stated:

> All of the fishery management plans approved to date have deviated to some extent from the guidelines. The councils have been repeatedly advised that the regulations were for guidance and were not accorded the same status as binding regulations.

Department of Justice Reply Brief at 6-7.

In *Stinson Canning Company, Inc. v. Mosbacher*, 731 F. Supp. 32 (D. Me. 1990), the Court stated:

> The Act called for establishment of ... advisory guidelines, based on the national standards set forth in 16 U.S.C. sec. 1851(a), to assist in the development of fishery management plans. 16 U.S.C. 1851(b). The Act states explicitly, however, that the guidelines shall not have the force and effect of law. *Id.* Failure ... [of the Secretary] specifically to address each of the factors is not, therefore, a violation of law.

731 F. Supp. at 37.

Flexibility in application of the Guidelines is, perhaps, best understood in light of the nature of the National Standards themselves. In *Alliance Against IFQs v. Brown*, *supra*, the Court stated:

> There is a necessary tension, perhaps inconsistency, among these [National Standards] objectives. The tension, for example, between fairness among all fishermen, preventing overfishing, promoting efficiency, and avoiding unnecessary duplication, necessarily requires that each goal be sacrificed to some extent in meeting the others.[20]

84 F.3d at 349.

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[20] The Sustainable Fisheries Act, in addressing efficiency, amended the referenced National Standard 5 to replace "promote" with "consider". P.L. 104-297, sec. 106(a).

> Congress required the Secretary to exercise discretion and judgment in balancing among the conflicting national standards in section 1851 [of the Act]... '[U]nless the Secretary acts in an arbitrary and capricious manner promulgating such regulations, they may not be declared invalid. ' *Alaska Factory Trawler Association v. Baldridge*, 831 F.2d 1456, 1460 (9th Cir. 1987).
>
> 84 F.3d at 350.

B. National Standard 1

Section 301(a)(1) of the Act provides:

> Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
>
> 16 U.S.C. 1851(a)(1).[21]

"Overfishing" is defined in the Act as, "...a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis." 16 U.S.C. 1802(29).[22]

> The term 'optimum', with respect to the yield from a fishery, means the amount of fish which—
>
> (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;
> (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor;[23] and

[21] Section 303(a)(3) requires that FMPs "assess and specify the...optimum yield...." 16 U.S.C. 1853(a)(3).
[22] Section 303(a)(10) of the Act, as amended, provides that a fishery management plan must "specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished", with a related analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of the stocks of fish in the fishery, and in the case of a fishery determined by the Council or Secretary to be approaching overfished condition or is overfished, the plan must contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery. 16 U.S.C. 1853(a)(10).
[23] *See* S. Rpt. 104-276 at 11.

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

16 U.S.C. 1802(28).

The Guidelines state that, "The most important limitation on the specification of OY [optimum yield] is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing." 50 C.F.R. 600.310(b).[24] The establishment of the Buyback would contribute to the prevention of overfishing and the achievement of the optimum yield, by reducing the harvesting capacity in the fishery from the present, excessive levels that are unmanageable and may, therefore, result in harvests that exceed, or even fall short of, the optimum yield, as reflected by the GHLs. Business Plan at 12. In short, with excessive fishing capacity on the grounds, and the resources in depressed condition, in-season management may be insufficiently responsive to prevent overharvests, and advance closure notices may be insufficiently reliable to prevent either underharvests or overharvests. This may result in unsustainable fisheries, as evidenced by very short openings or total closures, and economic hardships. With less capacity in the post-Buyback fisheries, the pace of harvesting would be slowed and, therefore, overfishing would be more avoidable and the optimum yield would be more achievable.

In this context, it is particularly important to note that, "Sustainable fisheries is a key theme within the Magnuson-Stevens Act", as amended by the Sustainable Fisheries Act. 62 F.R. 41908, August 4, 1997. The Guidelines reflect a considerable emphasis on

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[24] The Guidelines elaborate upon the matters relevant to the greatest overall benefit to the Nation as set forth in 16 U.S.C. 1802(28)(A) and the factors set forth in 16 U.S.C. 1802(28)(B). 50 C.F.R.

the adoption of conservation and management measures that will contribute to sustainability.[25] The Buyback is, thus, consistent with a key theme underlying a central provision of the controlling statute, National Standard 1, and the related Guidelines.

C. National Standard 2[26]

Section 301(a)(2) of the Magnuson-Stevens Act provides:

> Conservation and management measures shall be based upon the best scientific information available.[27]

16 U.S.C. 1851(a)(2).

This National Standard should be considered in light of *Associated Fisheries of Maine, Inc. v. Daley*, in which the Court stated:

> When an agency is faced with conflicting scientific views and chooses among them, its decision cannot be termed arbitrary and capricious. Indeed, a reviewing court must afford special deference to an agency's scientific expertise where, as here, that expertise is applied in areas within the agency's specialized field of competence. *See Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc.*,462 U.S. 87, 103, 103 S.Ct. 2246, 2255, 76 L.Ed.2d. 437 (1983); *United States v. Members of Estate of Boothby*, 16 F.3d. 19, 21-22 (1st Cir. 1994).

127 F. 3d 110.

The Guidelines for National Standard 2 provide that, "[s]cientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature". 50 C.F.R. 600.315(b)(1). "FMPs must take into account the best scientific information available at the time of preparation." 50 C.F.R. 600.315(b)(2). New information developed between initial drafting of an FMP and its submission for

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600.310(f)(2). Analysis of OY for the affected fisheries is found in the Crab FMP and documents supporting the LLP.

[25] *See, for example,* 50 C.F.R. 600.310 (National Standard 1—Optimum Yield).

[26] National Standard 2 was not amended by the Sustainable Fisheries Act.

[27] *See* section 303(a)(5), (8) of the Act. 16 U.S.C. 1853(a)(5), (8).

final review should be incorporated "where practicable." *Id.* However, the Guidelines also state, "The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP...." 50 C.F.R. 600.315(b).

New information has become available since the approval of the FMP amendments establishing the LLP for the BSAI king and Tanner crab fisheries. Data from the State of Alaska Commercial Fisheries Entry Commission ("CFEC") vessel registration records show, not only that excess capacity has persisted, but also, that vessels without recent participation returned in large numbers to the Bristol Bay red king crab fisheries due to projections of increased abundance, thus aggravating the management problem. The Buyback and contemplated FMP amendments are based upon this new information and historical data, as well as on the above-referenced Survey and independent financial analysis.[28] Taken together, these sources provide the best scientific information available. Additional information to be developed will further support the proposed amendments to the Crab FMP and Groundfish FMP that are related to the Buyback.

" FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures." 50 C.F.R. 600.315(d). As noted above, new information on the BSAI king and Tanner crab fisheries confirms the need for a change in management measures, i.e., for a buyback of excess licenses. FMP amendments to facilitate the Buyback would, indeed, be timely.

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[28] Analysis Prepared by Peat Marwick, presented to Council, September 23, 1997.
"Survey of Vessel Owners for the CRAB Group, Inc., May 1997 ("Survey"), revised November 1997, The McDowell Group, Juneau, Alaska,.

D. National Standard 3

Section 301(a)(3) of the Act provides:

> To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

16 U.S.C. 1851(a)(3).

According to the Guidelines, the purpose of this National Standard is to "induce a comprehensive approach to fishery management." 50 C.F.R. 600.320(b). In clarifying what constitutes the management unit, the Guidelines provide that it is the portion of the fishery identified in the FMP as relevant to the plan's management objectives. The Guidelines further provide that the choice of a management unit may be organized around "biological, geographic, economic, technical, social, or ecological perspectives." 50 C.F.R. 600.320(d)(1).

The Buyback would comply with this requirement, by applying to the tanner and king BSAI crab fisheries subject to the Crab FMP. Crab fisheries in Norton Sound, and generally, in State waters, which present distinct management cases, would not be included in the Buyback. Business Plan at 28.

E. National Standard 4[29]

Section 301(a)(4) of the Act, provides:

> Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote

[29] This provision was not amended by the Sustainable Fisheries Act.

> conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

16 U.S.C. 1851(a)(4).

The Report of the Senate Committee on Commerce Science and Transportation on S. 961, the bill which, as amended, was enacted as the Fishery Conservation and Management Act of 1976, states:

> [W]hen allocation becomes necessary, it must be done judiciously and carefully to prevent discrimination or bias. Since there will be pressures on representatives to protect residents of their home State, nothing will destroy the effectiveness of this new management program more than if one State, or group of States, attempts to favor their own residents to the detriment of others.

S. Rpt. 94-416 (1975), reprinted in *Legislative History of the Fishery Conservation and Management Act of 1976* ("*Legislative History*") at 686.

The House Merchant Marine and Fisheries Committee Report on H.R. 200, the companion measure to S. 961, states:

> With respect to the standard that requires such measures to be nondiscriminatory between residents of different States, the Committee would like to make it clear that this subparagraph would require the management plan to provide for uniform and equal treatment of United States citizens and corporations operating or engaging in the fisheries concerned without regard to their particular residence of State of incorporation.

H. Rpt. 94-445 (1975), *Legislative History* at 1114.

The proscribed discrimination is that based on state of residence. 50 C.F.R. 600.325(b). In particular, an FMP may not incorporate or rely on a state statute or regulation that discriminates against residents of another state.[30] This conforms with the Privileges and Immunities Clause of the United States Constitution, which provides,

[30] 50 C.F.R. 600.325(b). This view was reflected in the U.S. Department of Justice Memorandum in Support of Defendant's Opposition to Plaintiff's Cross Motion for Summary Judgment at 13, *Alaska Factory Trawler Association v. Baldridge, supra.*

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const., Art. 4, Sec. 2.

This does not mean that an FMP, while not so discriminating, may not have different effects on persons from various geographical locations, provided that those measures satisfy the other Guidelines relating to National Standard 4. 50 C.F.R. 600.325(b). In *Alaska Factory Trawler Association v. Baldridge, supra*, cited as controlling authority in *Alliance Against IFQs v. Brown, supra,* the Court stated:

> [The FMP amendment]... will benefit all long-line [sic] fishermen, not just those that are residents of Alaska. Even though there may be some discriminatory impact from [the FMP amendment]... the regulations satisfy the requirements of National Standard 4 in that they are tailored to solve a gear conflict problem and to promote the conservation of sablefish.
>
> 831 F. 2d 1460.

The Court in *Alliance Against IFQs v. Brown, supra,* stated, "The Secretary is allowed, under this authority [*Alaska Factory Trawler Association v. Baldridge, supra*], to sacrifice the interests of some groups of fishermen, for the benefit of the fishery as a whole. 84 F.3d 350.

The Courts have also ruled concerning the proper interpretation of the component of National Standard 4 providing that, if allocations are necessary, they must be fair and equitable to all United States fishermen, reasonably calculated to promote conservation, and carried out in a manner that no particular entity acquires an excessive share of the fishing privileges.[31] 16 U.S.C. 1851(a)(4).

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[31] The Guidelines define an "allocation" or "assignment" of fishing privileges as a:

> ...direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct

In *National Fisheries Institute v. Mosbacher*, *supra*, the Court stated:

Merely because these provisions [of FMP regulations] have a greater impact on one type of gear user or group of fishermen does not necessarily mean that they violate National Standard 4 [citing *Alaska Factory Trawler Ass'n v. Baldridge, supra*, at 1460].

732 F. Supp. at 225.

The NOAA Office of General Counsel has opined:

The phrase 'fair and equitable' in Section 301(a)(4)(A) is not defined in the [Act]... or elaborated on in the legislative history. While it is susceptible of countless interpretations, we suggest that the measure meet, at a minimum, the following standard: **the allocation must have a rational basis and must not impose a hardship on one group disproportionate to the benefits received by another group.** [Emphasis added.]

Opinion No. 89, Office of the General Counsel, NOAA, June 2, 1980 at 8.

Accordingly, the Guidelines provide that an allocation "should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective". 50 C.F.R. 600.325(c)(3)(i)(A). The Guidelines allow that management measures may impose a hardship on one group, if that is outweighed by total benefits received by another group or groups. 50 C.F.R. 600.325(c)(3)(i)(B). Thus, it is not necessary to show that no group is disadvantaged. In fact, the Guidelines recognize that "[i]nherent in an allocation is the advantaging of one group to the detriment of another." 50 C.F.R. 600.325(c)(3)(i)(A).

An allocation need not preserve the status quo to qualify as fair and equitable "if a restructuring of fishing privileges would maximize overall benefits." 50 C.F.R. 600.325(c)(3)(i)(B). In this regard, it is not necessary to show that the allocation is the

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distributions of fishing privileges will be judged against the allocation requirements of Standard 4.

only one that is fair and equitable. Not only may there be more than one allocation scheme which could be found fair and equitable, but also, what is fair and equitable may change over time.

A further requirement of National Standard 4 requirement is that an allocation be "reasonably calculated to promote conservation." 16 U.S.C. 1851(a)(4)(B). Conservation is assigned a very broad meaning. The Guidelines state:

> An allocation scheme may promote conservation by encouraging a rational, more easily managed use of resource. Or, it may promote conservation (in the sense of wise use) by optimizing the yield in terms of size, value, market mix, price, or economic or social benefit of the product.
>
> 50 C.F.R. 600.325(c)(3)(ii).

In *National Fisheries Institute v. Mosbacher, supra,* the Court stated, "As the Court has repeatedly held today, the provisions challenged in this suit—and the ensuing advantages for recreational fishermen—are necessary and rationally related to the FMP's legitimate objective of conserving billfish while also providing the greatest overall benefit to the nation."

The Guidelines interpret the test for judging an allocation under National Standard 4, that "no particular individual, corporation, or other entity acquires an excessive share of [the fishing] privileges." 16 U.S.C. 1851(a)(4)(C).

> An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.
>
> 50 C.F.R. 600.325(c)(3)(iii).

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50 C.F.R. 600.325(c)(1).

An issue of excessive shares was raised with respect to Amendment 8 to the Surf Clam FMP. Plaintiffs alleged market concentration in specific companies, not in a class of users. Despite allegations that two fishermen already controlled 40% of the quohog quota and that further consolidation could be expected, the Court upheld the agency action. The Court stated:

> ...the Act contains no definition of 'excessive shares,' and the Secretary's judgment of what is excessive in this context deserves weight, especially where the regulations can be changed without the permission of ITQ holders.

Sea Watch International v. Mosbacher, 762 F. Supp. 370, 380 (D.D.C. 1991).[32]

Consideration of the Buyback in relation to National Standard 4 requires a detailed description of proposed license classes. For the purposes of the Buyback, LLP licenses would be divided into two categories, A and B, each of which would have a reduced fee for vessels less than 60 feet LOA. Business Plan at 3, 17. The Council estimates that 368 vessels will be licensed for BSAI king and Tanner crab fisheries.[33]

In accordance with the Business Plan, A Licenses would be those which had at least one legal landing in any of the LLP king or Tanner crab fisheries during the period between the end of the LLP Qualifying Periods for Area Endorsements ("EQP"), and the

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[32] In considering what is an excessive share, the Secretary has found that the determination of shares in the fishery is to be based on how the fishery is initially divided.

> The Act does not intend that secondary economic forces in the aftermarket, which might concentrate the [surf clam] quota in a few individuals, must be prevented....

55 F.R. 24186, June 14, 1990.

[33] Supplemental Analysis of Final License Limitation Alternative for the Groundfish Fisheries of the Bering Sea/Aleutian Islands and Gulf of Alaska and the King and Tanner Crab Fisheries of the Bering Sea/Aleutian Islands, May 27, 1997, at 63-65. Fifty-nine additional vessels less than 60 feet LOA are licensed only for Norton Sound. These are not included in the Buyback, as they are not qualified to fish in the BSAI king and Tanner crab fisheries under the LLP. Of the 368 vessels noted above, fourteen vessels less than 60 feet LOA are qualified for those fisheries, and would be included in the Buyback. Of those 14, there are 8-10

date the Council voted to request development of a buyback plan by the Secretary of Commerce, that is, between December 31, 1994, and September 29, 1997, the Participation and Dependence Period ("PDP"). It is estimated that there would be 278 A Licenses, based on CFEC data.[34]

B Licenses would be those with respect to which there was no participation in the fisheries during the PDP. By amendment to the LLP, these licenses would be restricted in a manner that would allow their use only to the extent that they would not erode the conservation and economic benefits achieved by the Buyback. Restrictions would include non-transferability, a prohibition on use in any BSAI king or Tanner crab opening for which more than 200 vessels are registered to participate[35], and an expiration date to coincide with the completed repayment of the Buyback loan. Based on CFEC data, it is estimated that, as B Licenses are currently contemplated, there would be 90.[36] Business

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that are qualified only for the Pribiloff Islands king crab fishery, under the LLP exemption from the general qualifying period.

[34] It is estimated that three, highly efficient vessels at present under Russian flag would qualify for A Licenses under the terms of the LLP (and PDP). However, it appears that that these are prohibited from participating in the fisheries of the United States, until September 30, 1998, by an annual appropriations Act of Congress, section 616, P.L. 105-100, and would be permanently prohibited by enactment of S.1221, the American Fisheries Act or enactment of the Senate version of the Commerce/Justice/State fiscal year 1999 appropriations measure, S.2260 (section 614(a)(1)), pending before the 105th Congress. *See* Senate Report 105-235. The House companion appropriations measure, H.R. 4276 (section 616(a)(2)), would continue the ban on these vessels for fiscal year 1999, and would, of course, be subject to renewal in future appropriations measures.

[35] This number is supported by established management. In 1997, when more than 200 vessels registered for the Bristol Bay red king crab fishery, then the pot limits were decreased. *See* Business Plan.

[36] It is estimated that 22 vessels at present under Russian flag would qualify for B Licenses under the terms of the LLP and this Buyback. However, it appears that, of these, 10 are prohibited from participation in the fisheries of the United States by Act of Congress, section 616, P.L. 105-100, and would be permanently prohibited by enactment of S. 1221, the American Fisheries Act or enactment of the Senate appropriations measure referenced above. These vessels would also be banned for fiscal year 1999 by the House companion appropriations measure, also referenced above. Notably, most of the group of 22 vessels are highly efficient. There is evidence that the total 25 vessels currently under Russian flag and qualified under the LLP to return to U.S. fisheries are harvesting an amount of crab equal to the total harvest of crab in the Bering Sea/Aleutian Islands.. In competition with the existing U.S. fleet, the now Russian flag vessels would likely harvest approximately 15% of the U.S. available catch in the Bering Sea and Aleutian Islands. The B License category also includes an estimated 25 trawl vessels originally built as crab pot vessels, which upon reentry into the BSAI crab fisheries would be strong producers.

Plan at 13.

The average assessment would be 2.5% of the ex vessel value of each landing made under the license[37], except that, for vessels less than 60 feet LOA, the assessment would be one-half of the rate for the larger vessels. Business Plan at 17. The lower assessments for smaller vessels would avoid the disproportionately burdensome impact that otherwise uniform fees would have on those participants.

The fact is that 24.5% of the vessels to be issued licenses under the LLP qualifications for BSAI king and Tanner crab have not made a delivery of crab from those fisheries in the 33-month period of the PDP. Business Plan at 39. Those fishing businesses that were able to take advantage of movement to economically more attractive fisheries did so, and are no longer dependent on the BSAI king and Tanner crab fisheries. For those who have been and remain dependent on the BSAI crab fisheries, a return of long-absent capacity would inflict additional, extreme hardship.

As noted above, the Guidelines applicable to National Standard 4 provide that allocations should be rationally related to the achievement of the optimum yield or of other, legitimate FMP objectives. 50 C.F.R. 600.325(c)(3)(i)(A). The system of A and B Licenses, for the purpose of the Buyback, would ensure that the post-Buyback fisheries would not be threatened with unsustainable levels of capacity, and thus would promote achievement of the optimum yield.

The Crab FMP provides:

> The management goal is to maximize the overall long-term benefit to the nation of Bering Sea/Aleutian Island [sic] stocks of king and Tanner crabs by

[37] Based on the past ten years' performance.

coordinated Federal and State management, consistent with responsible stewardship for conservation of the crab resources and their habitats.[38]

Management objectives are:

1. Ensure the long-term reproductive viability of king and Tanner crab populations.
2. Maximize economic and social benefits to the nation over time.
3. Minimize gear conflict among fisheries.
4. Preserve the quality and extent of suitable habitat.
5. Provide public access to the regulatory process for vessel safety considerations.
6. Ensure that access to the regulatory process and opportunity for redress are available to all interested parties.
7. Provide fisheries research, data collection, and analysis to ensure a sound information base for management decisions.[39]

By permanently and substantially reducing capacity in BSAI crab fisheries, the Buyback would serve the first-enumerated objective set forth above. By ensuring that the risks to achievement of optimum yield would be reduced, the Buyback would serve the Crab FMP objective of maximizing economic and social benefits to the nation over time. By reducing capacity, the Buyback would also reduce gear conflicts among fisheries and would help preserve the delicate crab and groundfish habitat, thus serving the second-, third-, and fourth-enumerated objectives of the Crab FMP.

The fifth-enumerated objective focuses on public participation with respect to safety issues. The public process by which the Buyback is developed would fully accommodate this objective.[40]

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[38] Summary of Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (Revised 2/14/94) at 4.

[39] *Id. See* Summary of the Bering Sea and Aleutian Islands Groundfish Fishery Management Plan, March 1997 at 1-2; Fishery Management Plan for Groundfish of the Gulf of Alaska, at 2-1, 2-2. Consequential amendments to the BSAI groundfish FMP would be required for implementation of the crab license Buyback. The Buyback would serve the objectives of that FMP, for reasons similar to those offered in relation to conformity with the objectives of the Crab FMP.

[40] Notably, this objective should be amended to focus on the promotion of safety itself, as provided in National Standard 10. The Buyback would remain in conformity with this objective, as so amended, because a reduction of capacity in the fisheries would slow the race for fish and thereby improve safety. *See*

The system of A and B licenses would be fair to those license holders who have been, and would remain, dependent on the BSAI king and Tanner crab fisheries. B License holders would receive payment for termination of their qualification to participate in the Buyback fisheries. To those opting to continue holding B Licenses, economic return would be provided by participation in the post-Buyback BSAI king and Tanner crab fisheries through the 20-year term of the loan. To be fair to the crab fishery-dependent holders of A Licenses, the B Licenses would be subject to restrictions on transfer and use, and would be permanently retired at the end of the loan repayment period. Business Plan at 39-41.

The Business Plan observes that present participation in, and dependence on, the fishery are the central factors calculated to provide fairness in the establishment of the Buyback PDP, as they were in the establishment of the EQP. Historical participation is reflected in both the PDP and the EQP. Taken together, the EQP and the PDP establish eligibility and category of license. A single legal landing of BSAI king or Tanner crab during the 33-month period of the PDP by a vessel that also qualifies for a license under the EQP is sufficient to qualify that vessel for an A License. Business Plan at 13. B Licenses would be issued to vessels for which there is no recent continuity of dependence on those fisheries, as demonstrated by lack of participation therein during the PDP. Business Plan at 41. It is clear that a large number of B licenses, which would result from the broad inclusion of the EQP, would destroy the capacity reduction program, a patently unfair result, unless the B licenses were non-transferable, were permanently

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discussion of National Standard 10, below. The sixth- and seventh-enumerated objectives would not be affected by the Buyback.

retired at the end of the 20-year Buyback loan repayment period, and were subject to other, reasonable constraints. Business Plan at 45.

The Business Plan provides that participants in the post-Buyback fisheries would share the costs of the program in a manner proportionate to the benefits received. Those participants earning nothing (i.e., holders of inactive licenses) would pay nothing. A License holders would pay more than would B License holders. It is axiomatic that, to be fair to all participants, the Buyback must be structured to provide greater benefits to those who pay more. Permanent retirement of B Licenses at the end of the 20-year loan repayment period serves this objective. Business Plan at 37, 44-45.

Without regulatory constraint, the latency period of inactive licenses will only last until the fisheries have improved sufficiently to warrant a resumption of participation. The rapid, large-scale reentry of vessels to recovering fisheries would threaten or defeat sustainability. To avoid this result, B License holders must be precluded from reentering fisheries, where the result would be a level of capacity above sustainable levels. Business Plan at 13, 44-45.

The Business Plan observes that inactive licenses may also become active when they are sold. If this is not precluded by regulation, a limited entry program designed to reduce capacity, will thereby serve, instead, to increase capacity. This points to the need for non-transferability of B Licenses. Business Plan at 45.

The foregoing discussion of the Buyback in relation to National Standard 4 is summarized, as follows. The Buyback is rationally related to the achievement of the optimum yield and to the furtherance of other, legitimate FMP objectives. The Buyback would treat different classes of license holders differently, appropriately taking into account, *inter alia*, the history of, recent participation in, and continued dependence on, the Buyback fisheries. The Buyback would not, however, establish management measures that would discriminate between residents of different States in the manner proscribed by National Standard 4, nor indeed, by the United States Constitution. In short, State of residence is not the test for the application of the measures that would be established by the Buyback and related FMP amendments.

The allocation effects of the Buyback would necessarily impact some fishermen more favorably or unfavorably than it would others. B Licenses, but not A Licenses, would be non-transferable, invalid when total capacity exceeded certain limits, and revoked after repayment of the Buyback loan. However, there is a rational basis for this result. The B Licenses represent latent capacity, which reflects less dependence on the fisheries than exists for the holders of the more active A Licenses. The restrictions on B Licenses ensure that A License holders would eventually enjoy Buyback fisheries that could not be made unsustainable by the influx of latent capacity represented by the B Licenses. The cost to the B License holders and the benefit to the A License holders would be directly proportionate. Overall benefits would be maximized, taking into account conservation and safety, as well as economic factors.

The condition of the Bering Sea/Aleutian Islands crab fisheries, in the absence of the Buyback would remain extremely disordered, due to excess capacity. By permanently and substantially reducing capacity in the affected fisheries, the Buyback would lead to easier and more rational management. In addition, as noted, above, conservation would be promoted, by reducing the risk that optimum yield would not be achieved. A reduction of overcapacity would also improve safety and reduce bycatch, points addressed below, in the contexts of National Standards 9 and 10, respectively.

Of course, by removing licenses from the Bering Sea/Aleutian Islands crab fisheries, the Buyback would reduce the number of participants, and this would have the effect of increasing the share of fishing privileges enjoyed by those continuing to participate in the fisheries. However, the reduction of excess capacity, which must be effected to achieve conservation and other goals of the Act and the Crab FMP, can only be accomplished, as a practical matter, by reducing the number of participants. More to the point, the Buyback would not result in BSAI crab fisheries with fewer than approximately 200 vessels, and would not disturb the ownership caps established in the LLP to prevent the acquisition of excessive shares.

In summary, a fishery management measure may treat different fishermen differently, if impermissible discrimination among residents of different States is avoided, and if the allocation scheme is fair and equitable, reasonably calculated to promote conservation, carried out in manner that no particular entity receives an excessive share of the fishing privileges, rationally related to achievement of the optimum yield, and serves the objectives of the relevant FMP and the National Standards. The Secretary has the authority to balance the various objectives of the National Standards, if his or her basis for so doing is not arbitrary and capricious.

The Buyback would constitute a limited entry program fairly allocating fishing privileges, but would not discriminate impermissibly between the residents of different States. By so allocating these privileges, conservation would be promoted, the optimum yield would be more readily achieved, and important objectives of the relevant FMPs and the National Standards would be served. Excessive shares would be avoided. For these reasons, the Buyback complies with National Standard 4.

F. National Standard 5

Section 301(a)(5) of the Act provides:

> Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

16 U.S.C. 1851(a)(5).

This National Standard was amended by the Sustainable Fisheries Act to substitute the term, "consider", for the term, "promote". P.L. 104-297, section 106(a). The amendment was adopted by the Senate Committee on Commerce, Science, and Transportation, in the markup of S.39, the Sustainable Fisheries Act. (The House committee of jurisdiction did not adopt this amendment, nor was this considered on the House Floor as a separate amendment.) The Report of the Senate Committee on Commerce, Science, and Transportation on the S.39, states, in explaining the amendment:

> In the past, this national standard has been used to, among other things, justify ecologically wasteful, but economically efficient practices such as roe stripping. The goal of this amendment is not to eliminate efficiency as a consideration in the development of plans and regulations, but rather to ensure that it is balanced with the requirements of other national standards.

S. Rpt. 104-276 at 13.

In *Alaska Factory Trawler Association v. Baldridge*, *supra*, plaintiffs argued that regulations failed the then efficiency test, because the selected management alternative was not the most efficient, in terms of harvesting. Without commenting on the efficiency argument, the Court ruled that the regulations did not violate National Standard 5.

However, the Justice Department did address the issue, as follows:

> The maximization of technical efficiency (e.g., catching the most fish in the shortest time with the least expenditure of money and effort) is not synonymous with the maximization of overall benefits to the fishery and the nation. The regulations interpreting National Standards 4, 5, and 7, when read together, reflect a sensible balance of economic, social, and biological factors in the evaluation of FMPs. [Footnote omitted.] Efficiency in terms of benefit to the nation as a whole is an amalgamation of numerous considerations, of which technical efficiency is only a component part. <u>To the degree, for instance, that management measures discourage overcapitalization, congestion, and excess effort targeted on too small a resource base, overall benefits are enhanced and general efficiency is achieved.</u> [Emphasis supplied.]
>
> Brief for Federal Appellee at 41-42, *Alaska Factory Trawler Association v. Baldridge, supra.*

The substitution of the term, "consider", for the term, "promote", would affect the balance at work, here, by placing somewhat less emphasis on efficiency, relative to other factors addressed in the National Standards. However, management measures having the effect of discouraging overcapitalization, congestion, and excess effort, would continue to be considered favorably in determining compliance with National Standard 5, as amended.

The Guidelines provide some explanation of this National Standard, in the specific context of allocations. Significantly, the Guidelines state, "An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency." 50 C.F.R. 600.330(b)(2)(i).[41] The Guidelines assert, "Given a set of objectives for the

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[41] "Considering" might be substituted for "an increase in", to reflect better the National Standard, as amended by the Sustainable Fisheries Act.

fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable." 50 C.F.R. 600.330(b)(1).

The Guidelines also state:

> A 'system for limiting access,' which is an optional measure under section 303(b) of the Magnuson-Stevens Act, is a type of allocation of fishing privileges that may be considered to contribute to economic efficiency or conservation.

50 C.F.R. 600.330(c).

"... [L]imited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY." 50 C.F.R. 600.330(c).

The Buyback is aimed precisely at reducing overcapitalization, in the interest of achieving optimum yield, among other valid objectives. This not only accommodates consideration of efficiency, but also contributes to conservation.

As regards economic allocation, the Guidelines state:

> This [national] standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP, as well as the economic objectives.

50 C.F.R. 600.330(e).

In *Alaska Factory Trawler Association v. Baldridge*, *supra*, the Court stated:

> The record shows that the Secretary considered several non-economic objectives in promulgating the regulations and that the measure was not adopted solely for economic reasons. In consequence, the Secretary could reasonably conclude that [the plan amendment]... does not violate National Standard 5 [citation omitted].[42]

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[42] Plaintiffs attempted to attach a misleading interpretation to a statement of Senator Ted Stevens on the Floor of the Senate during consideration of S. 961. Legislative History, *supra*, at 345. His *amicus* brief in the case disposed of plaintiffs' interpretation suggesting that the Councils were intended not to take

831 F.2d at 1460.

In *Sea Watch International v. Mosbacher, supra*, the Court stated:

> Where the Secretary considered and relied upon... noneconomic objectives, when reviewing and promulgating regulations, there is no violation of National Standard 5. *See Alaska Factory Trawler Ass'n v. Baldridge* [,*supra*, at 1465].

762 F. Supp. at 380.

It has been shown that the Buyback and the related revisions to the applicable FMPs would have the effect of promoting, not only improved economic efficiency, but also, conservation and safety, by slowing the pace of BSAI king and Tanner crab fisheries through a permanent and substantial reduction of capacity. The point concerning safety is especially important in light in National Standard 10, addressed below, and the recognition by Congress of the uniquely dangerous occupational conditions prevailing in those fisheries. These considerations, as applied to the Buyback and related FMPs, ensure compliance with National Standard 5.

G. National Standard 6

Section 301(a)(6) of the Act provides:

> Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.[43]

16 U.S.C. 1851(a)(6).

The Guidelines note that "variations arise from biological, social, and economic occurrences, as well as from fishing practices." 50 C.F.R. 335(c)(1). The Guidelines

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economic considerations into account. Memorandum of Senator Ted Stevens as Amicus Curiae, *Alaska Factory Trawler Association v. Baldridge, supra.*

[43] This National Standard was not amended by the Sustainable Fisheries Act.

also note that "[e]conomic uncertainty may involve [,*inter alia,*]... drifts toward overcapitalization and perturbations caused by changed fishing patterns." *Id.*

The Guidelines state that management measures should include some protection against uncertainties in the fisheries, and should, to the extent practicable, provide a suitable buffer in favor of conservation. 50 C.F.R. 600.335(b), (c)(2). The Guidelines refer to economic, technical, biological, social, and other uncertainties. 50 C.F.R. 600.335(c)(1). The Guidelines provide that FMPs should have flexibility to meet contingencies. 50 C.F.R. 600.335(b), (d).

The Buyback is a response to the uncertainties of the affected fisheries. In particular, the Buyback addresses the management uncertainty inherent in overcapitalized fisheries. That is, the enormous excess capacity makes it difficult to avoid overharvest or underharvest. By reducing capacity, this uncertainty is mitigated or obviated. In the truest sense, the Buyback creates a buffer in favor of conservation, by slowing the fisheries, and improving the opportunity for achieving the optimum yield, subject to remaining, uncontrollable variations and contingencies, such as climate conditions affecting resource behavior and abundance. By reducing the number of vessels in the fisheries, management flexibility is greatly improved.

<u>H. National Standard 7</u>

Section 301(a)(7) of the Act provides:

> Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.[44]

16 U.S.C. 1851(7).

In relation to National Standard 7, the Guidelines provide that "[m]anagement measures should not impose unnecessary burdens on the economy, on individuals, or private or public organizations, or on Federal, state, or local governments". 50 C.F.R. 600.340(c). A cost-benefit approach is to be employed, although not necessarily by formalistic analysis. An evaluation is to be made of effects and costs, especially of differences among workable alternatives, including the status quo. 50 C.F.R. 600.340(d).

The burdens and other costs of management and fishing would be decreased by the reduction of capacity in the BSAI king and Tanner crab fisheries. As pointed out, above, the costs associated with the Buyback fees would be greatly outweighed by the benefits of increased return on investment. Costs to B License holders would be outweighed by benefits to A License holders. The Business Plan supporting the Buyback provides a detailed cost-benefit analysis, and evaluates effects and costs among alternatives, including the status quo.

I. National Standard 8

Section 301(a)(8) of the Act provides:

> Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such

[44] This National Standard was not amended by the Sustainable Fisheries Act.

communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.[45]

16 U.S.C. 1851(a)(8).

"Fishing community" is defined by the Act, as follows:

...a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States processors
that are based in that community.

16 U.S.C. 1801(16).

The legislative history of the Sustainable Fisheries Act includes considerable interpretative treatment of this National Standard. Reference is made to the Report of the Senate Committee on Commerce, Science, and Transportation, which included this provision in S.39, as reported to the Senate. S. Rpt. 104-276 at 13-14. The provision, and the definition of fishing communities, were debated and amended in the course of Senate Floor consideration of the bill. *Congressional Record*, September 18, 1996 at S10814, S10815, S10818. Senator Murray described the provision, as passed in the Senate and ultimately enacted into law:

This definition [of fishing communities in the manager's amendment for Senate consideration] recognizes that fishers are fishers no matter where they live. An individual fisher and his or her family, whether they work on a big boat and or [sic] a small boat, are equally dependent upon the fish for their livelihoods no matter where they live. The fisher from a small New England port, an Alaskan coastal town, or a metropolitan area like Seattle all make their living from the sea, their lives are all tied to the health and abundance of the fish they catch. They all deserve to be considered when difficult and painful fishery management practices need to be implemented. Under this bill, they will be.

Congressional Record, September 18, 1996 at S10815.

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[45] *See* section 303(a)(9)(A) of the Act, which requires fishery impact statements, to include, inter alia, consideration of fishing communities. 16 U.S.C. 1853(a)(9)(A).

The Guidelines extensively address this National Standard. They provide, in effect, elaboration of the Guidelines addressing social considerations pursuant to provisions of the Act predating the Sustainable Fisheries Act. 50 C.F.R. 600.345.[46]

The Guidelines state, "This standard does not constitute a basis for allocating resources to a specific fishing community nor for providing preferential treatment based on residence in a fishing community." 50 C.F.R. 345(b)(2). "Any particular management measure may economically benefit some communities while adversely affecting others." 50 C.F.R. 600.345(c)(4). Among other things, "[a] discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law." 50 C.F.R. 600.345(c)(5). The requirements for analysis of management options are set forth with specificity. 50 C.F.R. 600.345(c).

The Guidelines further state:

> Deliberations regarding the importance of fishery resources to affected fishing communities... must not compromise the achievement of conservation requirements and goals of the FMP... All other things being equal, where two alternatives achieve similar conservation goals, the alternative that provides the greater potential for sustained participation of such communities and minimizes adverse economic impacts on such communities would be the preferred alternative.

50 C.F.R. 600.345(b)(1).

"Sustained participation means continued access to the fishery within the constraints of the condition of the resource." 50 C.F.R. 600.345(b)(4).

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[46] *See also* 50 C.F.R. 600.310(f), 600.315(b), (c), (e), 600.325(c), 600.330(b)-(e), 600.335(b)-(d), 600.340(b)-(d).

The Buyback would have neither the purpose, nor the effect, of allocating resources to specific communities or providing preferential treatment based on residence in a fishing community. Business Plan at 43. Adverse impacts associated with fewer vessels in the affected crab fisheries would be minimized by the financial infusions provided by the Buyback payments. In the long run, the Buyback would increase the value of BSAI king and Tanner crab fisheries to communities, by leading to steadier employment, both at sea and on shore, through lengthier fishing seasons. In addition, the likely improvement to resource conditions would yield higher economic returns to the communities in which the vessel owners, crews, and shoreside processing plant workers live. Improved safety would also benefit social conditions in the affected communities.

The benefits of the Buyback to communities would by no means compromise conservation. Instead, the Buyback would result in improved resource management. By slowing the pace of the fisheries, the Buyback would lessen the risk that harvests would exceed, or fail to achieve, GHLs. By alleviating economic pressures, precautionary management would be more easily achieved. With the sustainability of the crab fisheries thus improved, the sustained participation of communities would be advanced by longer seasons and less serious cyclical declines in resource abundance.

It is also noted, here, that the Buyback would leave undisturbed the LLP-related provisions for community development quotas ("CDQs"). As regards the consequential effects of the Buyback on CDQ communities, it is clear that less capacity in the fisheries, by leading to improved harvests and economic returns to the remaining participants, would increase the real income of those communities from BSAI king and Tanner crab fisheries.[47]

I. National Standard 9

Section 301(a)(9) of the Act provides:

> Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.[48]

16 U.S.C. 1851(a)(9).

Section 303(a)(11) provides:

> Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—
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> *　　　　*　　　　*
>
> (11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—
> (A) minimize bycatch; and
> (B) minimize the mortality of bycatch which cannot be avoided....

16 U.S.C. 1853(a)(11).

For commercial fisheries, such as those to which the Buyback would apply, "bycatch" is defined in the Act as "...fish which are harvested in a fishery, but which are not sold or kept for personal use and includes economic discards and regulatory discards...." 16 U.S.C. 1802(2). "Economic discards" are defined in the Act as "...fish which are the target of a fishery, but which are not retained because they are of an

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[47] Amendment of the LLP to eliminate the possibility of new vessels entering those fisheries through CDQs would serve to guard for those communities, and for all others affected, the benefits of the Buyback.
[48] This provision first appeared in P.L., 104-297, section 108(a)(11), as did the definitions quoted above (section 102(2),(9),(33)). A policy of the Act is "to assure that the national fishery conservation and

undesirable size, sex, or quality, or for other economic reasons." 16 U.S.C. 1802(9). "Regulatory discards" are defined in the Act as "...fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell." 16 U.S.C. 1802(33).

Congressional interest and intent with respect to bycatch reduction was clearly reflected in the Senate and House Floor debates in the 104th Congress.[49] Senator Stevens declared that, "Under S.39, the councils will...be required to reduce the amount of bycatch in every fishery around our country." *Congressional Record*, September 18, 1996 at S10810. He also stated, "We thought Americanization would go a long way toward conserving the fishery resources of this Nation. <u>Foreign vessels have now given way to U.S. vessels that are capitalized now far beyond what we ever envisioned in the seventies, and the fisheries waste continues to get worse in many areas."</u> [Emphasis supplied.] *Id.* Senator Murkowski stated, "This will put us on the road to stopping the shameful waste that is currently occurring in many fisheries." *Id.* at S10820. Senator Gorton remarked, "...I join my colleagues in lauding those provisions that aim to reduce waste and bycatch in the fisheries...." *Id.* at S10814.

On the House Floor, Congressman Young, principal author of H.R. 39, and chairman of the committee of jurisdiction, stated, "The reduction of bycatch in our fisheries is one of the most crucial challenges facing fisheries managers today." *Congressional Record*, September 18, 1995 at H9116. On passage of S. 39, he stated, "...the bill recognizes that bycatch is one of the most pressing problems facing the

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management program...encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish...." 16 U.S.C. 1801(c)(3). *See* 16 U.S.C. 1853(b)(10).

[49] *See* S. Rpt. 104-276, May 23, 1996 and H. Rpt. 104-171, June 30, 1995.

continuation of sustainable fisheries. . . ." *Congressional Record*, September 27, 1996 at H11438.

The Guidelines address National Standard 9 in a detailed manner.

> The priority under this standard is first to avoid catching bycatch species where practicable. Fish that are bycatch and cannot be avoided must, to the extent practicable, be returned to the sea alive. Any proposed conservation and management measure that does not give priority to avoiding the capture of bycatch species must be supported by appropriate analyses.
>
> 50 C.F.R. 600.350(d).

To comply with this National Standard, the following must be considered: The net benefits to the Nation, which include, but are not limited to, "... [n]egative impacts on affected stocks; incomes accruing to participants in the directed fisheries in both the short and long term; incomes accruing to participants in fisheries that target the bycatch species; environmental consequences; non-market values of bycatch species...; and impacts on other marine organisms." 50 C.F.R. 600.350(d). The Guidelines further provide that, to comply with this National Standard, Councils must "... [s]elect measures that, to the extent practicable, will minimize bycatch mortality.... 50 C.F.R. 600.350(d)(3).

Bycatch should be categorized to focus on management responses necessary to minimize bycatch and bycatch mortality to the extent practicable. 50 C.F.R. 600.350(d)(1). In analyzing measures, including the status quo, the Councils should assess the impacts of minimizing bycatch and bycatch mortality, as well as consistency of the selected measure with other national standards and applicable laws. The benefits of minimizing bycatch to the extent practicable should be identified and an assessment of the impact of the selected measure on bycatch and bycatch mortality provided. 50 C.F.R. 600.350(d)(2).

The Guidelines set forth a number of factors that should be considered in addressing the requirements of this National Standard. 50 C.F.R. 600.350(d)(3)(i). When faced with uncertainty as to those factors, the Council should employ the precautionary approach adopted by the United Nations Food and Agriculture Organization. 50 C.F.R. 600.350(d)(3)(ii). The Guidelines also address monitoring measures that should be employed. 50 C.F.R. 600.350(d)(4). Finally, other applicable laws are identified in this context, along with the consequent obligation to consider impacts of management measures on living marine resources other than fish. 50 C.F.R. 600.350(e).

Clearly, these Guidelines are to be applied to all aspects of a fishery management plan that affect or relate to bycatch. The Buyback would be important to bycatch reduction, but would be a single element of the crab and groundfish management scheme. FMP amendments to ensure consistency with the Buyback would be significant, but relatively narrow in scope. Compliance of the Buyback with bycatch-related provisions of the Act and the Guidelines should, therefore, be determined within the context of the overall management scheme of the Crab FMP (and of the Groundfish FMP), taking into account the further consideration, and possible amendment, of those provisions, in compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act. *See* Amendments 10, 12a, 21a, 37, 40, and 41 to the Groundfish FMP.

Overcapitalization is well recognized as a cause of bycatch waste. The NOAA Fisheries Strategic Plan, May 1997 ("Strategic Plan") states, "... we will focus on reducing sources of waste such as overcapitalization... In the next five years, NOAA Fisheries will... [m]inimize bycatch to the extent practicable, and minimize mortality of unavoidable bycatch...." Strategic Plan at 12. Michael Sissenwine, senior scientist of the NMFS, also has noted overcapitalization as a cause of waste in the fisheries.[50]

A Report of the U.N. Food and Agriculture Organization states:

> There is growing global recognition that the world's fishing effort already exceeds what is necessary to harvest sustainable yields of marine fish. The single action that will provide the greatest improvement to the bycatch and discard problem in certain fisheries is the reduction of these effort levels. Without such control, other solutions to the bycatch and discard problem will be less effective, and real success in efforts to better manage the ocean's resources will be more difficult to attain.[51]

By reducing capacity and thus slowing the pace of BSAI king and Tanner crab fisheries, the Buyback would result in better selectivity in fishing patterns and improved handling of juvenile and female crab. Increased soak time would contribute to fewer juvenile crab being raised in the pots and, thereby, would decrease juvenile mortality. The Buyback would thus help minimize bycatch and minimize the mortality of bycatch that could not be avoided. Notably, gear requirements and other measures provided for in the Crab FMP (and Groundfish FMP) aimed at bycatch control would remain in effect, unless and until strengthened in light of National Standard 9 and section 303(a)(11) of the Act and the Guidelines.

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[50] Sissenwine and Rosenberg, Marine Fisheries at a Critical Juncture, *Fisheries*, Vol. 18, No. 10 at Figure 11.

K. National Standard 10

Section 301(a)(10) of the Act provides:

> Conservation and Management measures shall, to the extent practicable, promote the safety of human life at sea.

16 U.S.C. 1852(a)(10).

This National Standard, like the one pertaining to bycatch, was enacted in the Sustainable Fisheries Act.[52] Floor statements and committee hearings reflected enormous concern for the safety of fishermen, especially where excessive capacity had led to intense races for fish. Senator Murray, in her statement during debate on S.39, addressed the safety issue, as follows:

> ... [T]his race for fish creates serious safety considerations in many fisheries. Under this race, fishers feel compelled to keep fishing even when the weather or conditions of the vessel or health of the captain or crew would suggest otherwise. Unless fishery management plans provide opportunities and incentives for fishers to sit out storms and return to port for repairs or medical attention, lives will continue to be lost... The crab fishery of the North Pacific is the most dangerous occupation in the Nation....
>
> For this very reason we included promotion of safety of life at sea in the National Standards of the Magnuson Act.
>
> *Congressional Record,* September 18, 1996 at S10818.

The Guidelines observe that fishing is an "inherently dangerous occupation" and that National Standard 10 "... directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management." 50 C.F.R. 600.355(b)(1). It is noted that, "the safety of the fishing vessel and the protection from

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[51] Everett, Fisheries Bycatch and Discards: A Report from FAO, *Solving Bycatch: Considerations for Today and Tomorrow* at 280 (*see* Endnotes).
[52] P.L. 104-297, section 106(b)(10).

injury of persons aboard the vessel are considered the same as 'safety of human life at sea'". 50 C.F.R. 600.355(b)(3).

Particularly relevant is the following:

> Fisheries where time constraints for harvesting are a significant factor and with no flexibility for weather, often called 'derby' fisheries, can create serious safety problems. To participate fully in such a fishery, fishermen may fish in bad weather and overload their vessel with catch and/or gear. Where these conditions exist, FMPs should attempt to mitigate these effects and avoid them in new management regimes....

50 C.F.R. 600.355(c)(3).

The Guidelines state that, "This standard is not meant to give preference to one method of managing a fishery over another." 50 C.F.R. 600.355(b)(1). However, the Guidelines set forth examples of mitigation measures that could be considered. These include limiting the number of participants in the fisheries, spreading effort over time and area to avoid gear and/or vessel conflicts, and implementing management measures that reduce the race for fish and the resulting incentives for fishermen to take additional risks with respect to vessel safety. 50 C.F.R. 600.355(e)(6), (7), (8).

The Guidelines provide a "non-inclusive" list of what should be considered in evaluating management measures under National Standard 10. These are: Operating environment, gear and vessel loading requirements, and limited season and area fisheries. 50 C.F.R. 600.355(c)(1)-(3).

The Guidelines provide that the Councils should consult with the Coast Guard during the preparation of management measures that might affect safety of human life at sea. 50 C.F.R. 600.355(d).

Bering Sea/Aleutian Islands crab fishing is the most dangerous occupation in the United States.[53] The Buyback would reduce the risk of death and injury and damage to fishing vessels, by slowing the race to harvest crab in the affected fisheries.

It has been shown that the Buyback is consistent with National Standards 1-9. This Memorandum also shows that the Buyback is consistent with other legal practical requirements of conservation and management. The Buyback fits among the Guidelines' examples of appropriate mitigation measures.

Clearly, the operating environment for Bering Sea/Aleutian Islands crab fishermen is a critically important consideration. The Buyback responds to the harsh environmental conditions of the affected fisheries, by allowing fishermen more time in which to harvest the resource, and thus, a better opportunity to avoid fishing in the most dangerous weather conditions. Gear and vessel loading requirements in these fisheries are also a major consideration. Again, by reducing capacity and thus stretching out the fishing seasons, the Buyback allows safer handling of the heavy pot gear and reduces dangers to vessel stability. It is evident that the severely limited seasons and hazardous areas are important considerations leading to the Buyback.

VI. Determination of Compliance with the Requirements of Section 303(b)(6) of the Act

Section 303(b)(6) of the Act provides that a fishery management plan may:

> [E]stablish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—
>
> (A) present participation in the fishery;

[53] Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, Division of Safety Research, Alaska Field Station, 4230 University Drive, Grace Hall, Suite 310, Anchorage, Alaska, November 4, 1997.

> (B) historical fishing practices in, and dependence on, the fishery,
> (C) the economics of the fishery,
> (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
> (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and
> (F) any other relevant information.
>
> 16 U.S.C. 1853(b)(6).

The issue of present participation in the fisheries is one which has been addressed recently by the Courts. In *Alliance Against IFQs v. Brown*, *supra*, plaintiffs argued that the IFQ program for halibut and sablefish violated section 303(b)(6)(A) (16 U.S.C. 1853(b)(6)(A)) of the Act because the years, 1988, 1989, and 1990, were utilized for determining qualifications to receive individual quotas, but the program was not approved by the Secretary until November 9, 1993. In rejecting the argument, the Court observed the following:

> [1] Congress left the Secretary some room for the exercise of discretion, by not defining 'present participation,' and by listing it as only one of many factors which the Council and the Secretary must 'take into account'.
>
> [2] While the 'participation' that the Council actually considered was admittedly in the 'past' judged from the time when the final regulations were promulgated, it was roughly 'present' with the time when the regulations were first proposed. The Council began its process on this plan in 1990, and considered participation in 1988, 1989, and 1990.
>
> [3] The process required to issue a regulation necessarily caused substantial delay. The process of review, publication, public comments, review of public comments, and so forth, had to take a substantial amount of time, *see* 16 U.S.C. sec. 1854(a), and the environmental impact review also was lengthy, as it typically is, *see* 42 U.S.C. sec. 4332(2)(C). 'Present' cannot therefore prudently be contemporaneous with the promulgation of the final regulations.
>
> [4] We further believe that the Secretary had a good reason for disregarding participation in the fishery during this lengthy process, because the alternative would encourage the speculative over-investment and overfishing which the regulatory scheme was meant to restrain.

84 F.3d 347-348.

The Court concluded:

> Thus, while the length of time between the end of the participation period considered and the promulgation of the rule pushed the limits of reasonableness, we are unable to characterize use of a 1988 through 1990 period so far from 'present participation' when the regulation was promulgated in 1993 as to be 'arbitrary and capricious'. *Washington Crab*, 924 F.2d at 1441. *See also* 16 U.S.C. sec. 1855(b)(1)(B); 5 U.S.C. sec. 706(2)(A)-(D).

84 F.3d 348.

The factors enumerated immediately above are highly relevant to a determination of whether the qualifying years in the Buyback comply with section 303(b)(6)(A) of the Act. 16 U.S.C. 1853(b)(6)(A). With certain exceptions and conditions, the qualifying years under the License Limitation Program are as follows: a) in the case of crab, a Base Qualifying Period for General Licenses of January 1, 1988-June 27, 1992 (with vessels that crossed over from groundfish to crab by December 31, 1994 also qualified), and Endorsement Qualifying Periods for Area Endorsements of January 1, 1992-December 31, 1994 (except for Bristol Bay, which would be January 1, 1991-December 31, 1993). Licenses would be issued to qualified owners as of June 17, 1995, for both groundfish and crab. *See* 62 F.R. 43865, August 15, 1997, for additional details and explanation.

The Council issued the Environmental Assessment/Regulatory Impact Review for the LLP on September 18, 1994, and the Supplementary Analysis on May 27, 1997; the notice of availability of LLP FMP amendments was published on June 16, 1997.[54] The lists of problems and alternative solutions had been presented to the Council by its staff

[54] 62 F.R. 32579, June 16, 1997.

in January 1993. The NPFMC was notified of approval of the LLP FMP amendments on September 12, 1997.[55]

As explained, above, the Buyback would adapt the EQP end date, December 31, 1994, to serve as one of two points of reference in determination of classes of licenses for the Buyback. The other point of reference would be September 29, 1997, that date being the one on which the NPFMC voted to request that the Secretary of Commerce proceed with the Buyback. The period between those dates would be the Participation and Dependence Period, the PDP. Participation during the PDP would qualify for A Licenses under the Buyback. Other LLP licenses would be classed as B Licenses. Business Plan at 13.

The fact that the LLP qualification dates have been approved by the Secretary strongly suggests that the Buyback dates would also meet the legal test. The "limits of reasonableness" allow ample time for the completion of the requisite legal procedures for establishment of the Buyback. Any amendment of the LLP to make the qualification dates closer to the present would be accomplished during the period that the Buyback is in preparation. Delay of implementation of the LLP and the Buyback by January 1, 2000, as planned, would be avoided.

As the Court in *Alliance Against IFQs v. Brown, supra*, held, concerns regarding speculative over-investment and the risk of overfishing would justify ignoring participation during the closing stages of the development of Buyback regulatory scheme. In the case of the LLP, the Council's proposed qualifying periods did lead to speculative fishing. This would be avoided in the Buyback, by utilizing the described points of

[55] Letter from Steven Pennoyer, Administrator, Alaska Region, National Marine Fisheries Service, to

reference, in particular, the end date for the PDP. The November 1997 Bristol Bay king crab season evidenced massive reentry of converted trawlers and other vessels, presumably for speculative purposes. The Buyback would relegate them, and later re-entries, to B Licenses, unless they were otherwise qualified for A Licenses.

As noted above, section 303(b)(6)(B), (C), and (D) of the Act also requires that the Council and Secretary take into account, in establishing a limited access system, historical fishing practices in, and dependence on, the fishery; the economics of the fishery; and the capability of fishing vessels used in the fishery to engage in other fisheries, among other factors. 16 U.S.C. 1853(b)(6)(B), (C), (D). The Business Plan does take into account historical fishing practices and the economics of the affected fisheries. The establishment of license classes reflects demonstrated dependence on BSAI king and Tanner crab fisheries and the demonstrated capability of fishing vessels used occasionally in those fisheries to engage in other fisheries. The vessels to which B Licenses would apply are not dependent on the Bering Sea/Aleutian Islands king and Tanner crab fisheries. However, vessels that have remained in those fisheries consistently in recent years, as reflected by participation during the PDP (or, indeed, during certain, revised qualification periods in the pending LLP amendment package), have foregone other fishing opportunities. Those vessels, which are to receive A Licenses, have been continuously and increasingly dependent on the Bering Sea/Aleutian Islands king and Tanner crab fisheries. The restrictions imposed on B Licenses would most appropriately take these facts into account, in compliance with section 303(b)(6)(B), (C), and (D) of the Act. 16 U.S.C. 1853(b)(6)(B), (C), (D). Amendment of

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Richard Lauber, Chairman, NPFMC, September 12, 1997.

the LLP to make the basic qualification dates more current would strengthen the Buyback from the standpoint of present participation, while retaining the earlier-approved endorsement periods, and thus continuing to take account of historical experience.

The considerations set forth in section 303(b)(6)(E) relate to the cultural and social framework and to affected fishing communities. 16 U.S.C. 1853(b)(6)(E). Section 303(b)(6)(F) requires the Council and the Secretary to take into account "any other relevant considerations". 16 U.S.C. 1853(b)(6)(F). It is expected that these factors will be comprehensively addressed in analyses required by law.

VII. Requirements of Title XI, MMA

If Federal loan obligations are to be utilized in support of a buyback—

1. regulations are authorized and directed to be issued by the Secretary, as he deems necessary, to implement section 1111, title XI, MMA (section 1111(d))[56];
2. loan obligations for a buyback—
    a. are limited to $100 million in an unpaid principal amount outstanding (section 1111(b)(3));
    b. shall—
        (1) have a maturity of not longer than 20 years;
        (2) take such form; and
        (3) contain such conditions—

        as the Secretary determines necessary for the program to which they relate (section 1111(b)(4)); and
    c. must meet such requirements as the Secretary determines to be necessary for—
        (1) achieving the objectives of the buyback; and
        (2) protecting the interest of the United States (section 1111(a)).
3. The annual rate of interest which obligors shall pay on direct loan obligations shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to

[56] The Secretary must establish a subaccount for the Buyback. Section 1111(b)(2), MMA.

> pay as the interest cost of borrowing from the United States Treasury the funds with which to make such loans. Section 1112(b), MMA.

As provided by the Business Plan, the loan obligation for the Buyback is less than the maximum $100 million in unpaid principal amount, and the maturity of the loan is 20 years. Business Plan at 3, 13, 17. It is expected that the Secretary will establish the specified loan rate and such loan requirements and conditions as are necessary to achieve the objectives of the Buyback and to protect the interest of the United States.

VII. Other Applicable Law

The Environmental Assessment/Regulatory Impact Review for the Buyback will address other applicable law.