

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Clarence G. Pautzke
Executive Director
DATE: September 21, 1995
SUBJECT: Comprehensive Rationalization

ESTIMATED TIME

2 Hours

ACTION REQUIRED

- (a) Receive a status report on implementing the moratorium.
- (b) Receive reports on the groundfish and crab license limitation programs and verify Council intent regarding the definition of current owners, lost vessels, and licenses for crossover vessels.
- (c) Receive a staff report on the pollock ITQ alternatives.

BACKGROUND

(a) Moratorium

The RAM Division of NMFS is on schedule for implementing the moratorium on January 1, 1996. They have been working to develop the data base necessary to determine who might qualify. Once that is complete they will mail out the moratorium permit applications, most likely in November.

(b) License Limitation

Work on the Proposed Rule and the Secretarial Review Draft EA/RIR for the Groundfish and Crab License Limitation Program is progressing. In addition to the existing document and supplements, the Secretarial Review Draft will include an addendum describing the Council's final action, and its impacts on the industry and on affected coastal communities. The Secretarial Draft of the EA/RIR is expected to be completed during October and November 1995, incorporating clarification from this meeting. Work on the Proposed Rule for the License Limitation Program is ongoing, and is expected to be completed in the Spring of 1996, with the implementation process, if approved by the Secretary of Commerce, expected to begin in 1997. Fishing under the License Limitation Program is expected to begin in 1998.

Council staff is requesting clarification of several items which will affect the final configuration of the License Limitation Program as well as the number of licenses and endorsements issued. Three short discussion papers regarding these issues are included in your notebook. A brief discussion of each of these topics is included below. The complete discussion papers can be found under items C-3(b)(1) through C-3(b)(3). In addition, several letters regarding comprehensive rationalization have been received from industry and are included in the notebook under item C-3(b)(4).

Date Defining "Current Owners"

Following the June meeting staff interpreted Council intent regarding license recipients as follows: "Licenses will be issued to current owners, as of 6/17/95, of qualified vessels." Further, license recipients must be "persons eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C." At the June meeting no specific mention of the date for determining the "current owner" was made, and the staff relied on the language in the original proposal from the State of Alaska. Using the date of final Council action as the date to determine "current owners" and license recipients, will create an inconsistency between the License Limitation Program and the moratorium. The moratorium will issue permits to owners at the time of application. Some members of the industry, and in fact NMFS staff who will write the regulations, believed the Council's intent was to issue licenses to current owners at the time of application for licenses. Further complicating matters are questions regarding Council intent with respect to transfers or reservations of fishing history and fishing rights, expressly included in vessel purchase agreements or other contracts. Under the moratorium, the Council asked that NMFS honor these transfers, however the Council did not explicitly state its intent under the License Limitation Program. A letter from the Coalition for Stability in Marine Financing suggests Option D (date of application) be used, for reasons related to lending and financing.

The attached discussion paper (Item C-3(b)(1)) deals with this issue in detail. There appear to be four ways to interpret Council intent regarding license recipients. These four options are shown below. Option C is presumed to match the Council's intent, and will be implemented unless the Council chooses a different option.

- Option A: "Current Owner Date" is date of final Council action. Transfers of rights are not recognized.
- Option B: "Current Owner Date" is date of application. Transfers of rights are not recognized.
- Option C: "Current Owner Date" is date of final Council action. Transfers of rights are recognized.
- Option D: "Current Owner Date" is date of application. Transfers of rights are recognized.

Qualification of Lost Vessels Under the Moratorium and License Programs

The moratorium and the Council's groundfish and crab license limitation program treat lost vessels differently. Under the moratorium, qualified vessels which were lost are given two years to reenter the fisheries and receive a moratorium permit. Under the groundfish and crab license limitation program vessels which were lost are allowed to qualify for endorsements in the Central Gulf/West Yakutat and Southeast Outside area with reduced landings requirements, but no other provisions are included. A discussion paper on this issue is included as Item C-3(b)(2). The Council may wish to verify its intent with regard to lost vessels. Several letters to the Council regarding this issue are included in the notebook under Item C-3(b)(4).

Crab to Groundfish Crossovers

The Council chose to allow vessels which crossed over from crab into groundfish after the base qualifying period, to receive groundfish endorsements. Additionally, the Council stipulated that groundfish endorsements were to be issued only in the FMP area or areas in which the vessels participated in the base period. Thus, if a vessel had groundfish landings in the base period in the BSAI, the vessel would be eligible to receive endorsements for either or both the Bering Sea or Aleutian Island groundfish management areas. If a vessel fished groundfish in the GOA during the base period, then it would be eligible to receive endorsements in the Western Gulf, Southeast Outside, and/or the Central Gulf/West Yakutat management areas. If a vessel fished groundfish in both FMP areas during the base period it could receive endorsements in all five management areas. Vessels which crossed over from crab are problematic because they may not have had groundfish landings in either the GOA or the BSAI in the base period, and therefore have nothing upon which to base their endorsements. The issue is whether vessels which

fished only BSAI crab in the base period should receive endorsements for GOA groundfish, as well as BSAI groundfish endorsements. This issue and alternative resolutions are fully described in the discussion paper, Item C-3(b)(3). The Council may wish to affirm that the assumptions as stated mirror the Council's intent, or they may choose to make the provisions for crossover vessels tighter.

(c) Pollock ITOs

In June, the Council approved for analysis a proposal to implement IFQs in the BSAI pollock fisheries. Since then we've concentrated our efforts on understanding the proposal and its potential ramifications on management, not only of the pollock fisheries, but also of non-pollock fisheries. The proposal, which has been re-typed from the original, is Item C-3(c)(1).

We have also developed a preliminary outline of an EA/RIR which examines two basic alternatives: (1) Continued Status Quo, and (2) IFQ for BSAI Pollock. As a result of experiences in other allocative programs such as the sablefish and halibut IFQs and the groundfish and crab license program, we are planning to produce two documents that will comprise the EA/RIR: (1) the General Analysis of the Alternatives, and (2) a Supplemental Analysis of IFQ Allocation Options. The main document will follow the general pattern of a typical EA/RIR discussing the current environment and comparing the alternatives from a relatively broad and generalized perspective. The supplemental analysis will focus on the allocation of initial Quota Shares (QS) and IFQs. This type of structure is similar to that used for the License Limitation Program. The preliminary outline of the EA/RIR and the Supplemental Analysis of IFQ Allocation Options is found in Item C-3(c)(2).

The change to IFQ management requires a complete restructure of the management and administrative process. The existing structure has been built up over many years with incremental decisions and changes made by the Council and NMFS. Converting to a different management structure therefore requires that many of the decisions made in the past be re-addressed. The complexity of the management change and an idea of the number of decisions which must be made is seen in Item C-3(c)(3), the detailed outline of Chapter 5 of the EA/RIR focusing on Alternative 2: IFQ for BSAI Pollock.

Chapter 5 begins with a general overview and literature review of IFQ systems and discusses some the implications of IFQs in multi-species fisheries such as the BSAI trawl fisheries. Much of this research has already been compiled. IFQ systems around the world have focused on IFQs for harvesters (a "one-pie" system), and have largely been silent on the effects on processors under these systems. This section of the document will also examine the theoretical aspects of processors *vis-a-vis* a harvester IFQ system, and will examine the issue of the inshore-offshore allocation under a "one-pie" system.

The next part of the general overview will discuss the theoretical aspects of the "two-pie" system, which would allocate harvesting IFQs to harvesters and processing IPQs to processors. This is the system specified in the proposal for Pollock IFQs in the BSAI. The concept of a "two-pie" system has been around for several years, but was not seriously considered as an option in IFQ management in the North Pacific, until the June 1993 Council meeting in Kodiak, when a paper on the subject was presented to the Council by Dr. Scott Matulich of Washington State University. Since then Dr. Matulich's paper has been scrutinized by the SSC, and other prominent fisheries economists. In August 1995 a revised version of the original paper was accepted by the *"Journal of Environmental Economics and Management,"* a respected scientific journal. Dr. Matulich has provided the Council and members of the SSC copies of the draft article. A letter from Dr. Matulich and a summary of the article are found attached as a supplement to this agenda item.

The second major section of Chapter 5, as seen in the detailed outline, will examine the management of pollock under IFQs. It is in this section where the complexity of the management change becomes apparent. Almost every aspect of the current management of pollock will need to be revisited, and at nearly every point along the

way a choice among several options must be made. In the detailed outline, decision points are marked with a check (✓). Items below the check are the potential options. Some options contain sub-options and they are also marked. For other decision points, options are not listed but are implicit. An example of a decision point with implicit options is the "CDQ apportionment" (the third check mark). Implicit options include specific allocations to each CDQ group. Many of the specified options in the outline were included or implied in the original proposal. Others were added by staff for completeness.

In general the decision points shown in the detailed outline for Chapter 5 are "systematic" decisions, which for the most part will not affect the outcome of the initial allocation of QS. Some of these decisions are more critical than others because they will determine the necessity for other aspects of the management program. For example, the first decision point requires the Council to decide whether or not to include the bottom pollock fishery in the IFQ program. This decision has wide ranging impacts on the rest of the management system. If bottom pollock is included in the IFQ program then management requirements regarding prohibited species are greatly increased, as is the need to apportion bycatch amounts of other groundfish such as Pacific cod to the IFQ fishery.

Allocation aspects of pollock IFQs are split between Chapter 5 (part c in the outline) and the Supplemental Analysis. The allocation section in Chapter 5 contains a general overview of the critical nature of the initial allocation and a generalized discussion of various methods of allocation which have been used around the world and/or proposed for use in the pollock IFQ program. This section also contains an outline which highlights allocation decisions that are systematic in nature. These include: (1) the determination of the "current owner" date, which was discussed earlier under license limitation, (2) primary qualification criteria, (3) types of data to be used in the QS calculations, and finally, (4) the disposition of CDQ catch in terms of the IFQ allocation. The Council may wish to make some clarifications regarding these issues at this meeting.

The remaining sections of the chapter on Pollock IFQs direct the reader to the Supplemental Analysis of IFQ Allocation Options, and then projects the pollock fishery in the future under IFQs. The projection will be based on information gathered from harvesters and processors, and on simulations using models of the fishery developed earlier in the CRP process and possibly on other models which have been developed more recently. The specifics of the projection of the future fishery are still under development, as are methods which will be used to determine costs and benefits of the change to management under an IFQ system. These specifics will be more developed after this meeting with guidance from the SSC.

The Supplemental Analysis of IFQ Allocation Options will focus on the options which combine to create the specific allocation of quota shares and IFQs. The structure of this part of the overall package will be based on the "Hierarchy of Pollock IFQ Allocation Options," a preliminary draft of which is found in C-3(c)(4). The "Hierarchy" uses the same methodological approach and number system used in discussing the elements and options of the License Limitation Program. Essentially the "Hierarchy" dissects the allocation options contained in the original proposal into decision points. Each decision point (shown in bold text) contains two or more options. The Council will need to choose one option under each decision point in order to specify a complete allocation configuration. The numbering system will enable a short-hand identification of unique allocation configurations.

The options shown in the "Preliminary Hierarchy" have been derived from the original proposal approved by the Council in June. In some case staff have added necessary decision points or options where appropriate. Following the main body of the "Preliminary Hierarchy," we have listed additional options which the Council may wish to add. These appear to be reasonable additions which would either "round out" the suite of options, or make them more consistent with the License Limitation Program and actions taken in June. In addition, the Council may add or delete options as they see fit. To this end, Item C-3(c)(5) contains the suite of General IFQ Alternatives which were "on the table" at the time the Council elected to focus its energy on the Groundfish and Crab License Limitation Program. These alternatives include the State of Alaska's two-phased GLS System.

Although detailed analysis of specific allocation configurations has not been conducted, there are options which have the potential to greatly simplify the initial allocation. These were implied in the original proposal from June, and in a letter from Alaska Ocean Seafood (included as the last letter in item C-3(b)(4)). These options would "guarantee" a minimum IFQ, not less than a set percent of a vessel's catch in a recent time period. In the proposal the "minimum QS percentages" ranged from 75% to 95%. Under these options, the impact of historical participation or weighting factors is greatly reduced.

Individual Bycatch Quota Program. An individual bycatch quota program (IBQ) for PSC for directed fisheries for all non-pollock species was included as Option II.E under Harvesting Provisions in the original proposal approved by the Council in June. Details of this program were not included in the original proposal. Since that time, United Catcher Boats (UCB) has submitted a groundfish proposal for a "Vessel Bycatch Accounting (VBA) Program." The proposal and additional documents submitted by UCB are found in Item C-3(c)(6). We have assumed that the details provided in the VBA proposal may be used to specify the details of the IBQ option. The VBA (or IBQ) program would establish a bycatch management program for all BSAI trawl fisheries. The program would allocate halibut, *C. Bairdi*, and red king crab to each harvesting vessel as an individual prohibited species quota. Once a vessel's PSC was caught it would no longer be able to fish in a directed fishery.

The staff recognizes the potential merits of a VBA or IBQ program. However, because all BSAI trawl fisheries would be included, the scope of these programs is much greater than the BSAI pollock fisheries. Therefore staff suggests that the assessment of a VBA/IBQ program be made under a separate analysis. NMFS staff has prepared a discussion paper for this meeting which focuses on implementation/monitoring aspects of programs of individual accountability. This will have relevance for the proposed IBQ/VBA programs as well as programs such as Harvest Priority and Improved Retention/Utilization. This paper is included in your Supplemental Folder, and will be summarized by NMFS staff.

"Current Owners" and Transfers of Fishing Rights

Introduction

In approving the License Program the Council stipulated that licenses be issued to the "current owner" of the vessel. However, it was unclear to many just what the Council meant by "current owner," and how the transfer or retention of fishing rights in vessel purchase agreements would be accounted. Based on the original proposal detailing the License Limitation Program, Council staff concluded that licenses would be issued to the owner of vessels as of the date of final Council action. Further, staff inferred from Council discussion in June and from previous meetings concerning license limitation and the moratorium, that the Council intended that vessel transactions specifying the disposition of fishing rights would be honored in the License Limitation Program. Unless the Council advises otherwise, this will be taken as the Council's intent and regulations will be written accordingly.

The previous statement notwithstanding, it may be important for the Council to examine some of the issues involved in more detail, and the potential consequences of this interpretation, some of which may be unintended. The interrelationship between the license program, the moratorium, license recipients, and transfers of fishing rights, creates situations which may lead to confusion and disruption in the industry, and perhaps legal action against NMFS if they implement the License Limitation Program.

This paper discusses two different ways to define "current owner":

- (1) The owner at the time of final Council action.
- (2) The owner at the time of license application. Additionally, the Council and NMFS could either recognize vessel transactions which specified the disposition of fishing history or fishing rights, or disregard them. Altogether, these two issues combine to create four different options to determine the license recipient, Option C being the default assumption:

Option A: "Current Owner Date" is date of final Council action. Transfers of rights are not recognized.

Option B: "Current Owner Date" is date of application. Transfers of rights are not recognized.

Option C: "Current Owner Date" is date of final Council action. Transfers of rights are recognized.

Option D: "Current Owner Date" is date of application. Transfers of rights are recognized.

Definitions

The discussion that follows requires definition of the following terms:

Moratorium Qualified Vessel: A vessel which met the landing requirements for the moratorium.

License Qualified Vessel: A vessel which met the landing requirements for licenses and endorsements under the Council's License Limitation Program.

License Recipient: The Council's License Limitation Program issues licenses and endorsements to the "Current Owner" of license qualified vessels.

Current Owner Date: The date upon which the "current owner" of the vessel is determined for purposes of the issuance of licenses and endorsements.

Date of Final Council Action: June 17, 1995; this is the defacto option for the "Current Owner Date."

Date of Application: This is defined as the date on which the application for groundfish or crab licenses is submitted. Technically this will probably be a range of dates within a 60-day period.

Purchase Agreement: The contract in which details of a given transaction are recorded.

Transaction: A legal transfer of the ownership of a given vessel and/or its fishing history or fishing rights.

Fishing History: The history of participation in a fishery by a given vessel, including all participation in fisheries prior to the date on which the current owner purchased the vessel, unless that portion of the fishing history was expressly reserved in a purchase agreement for a previous seller in a prior transaction.

Fishing Rights: The rights to use a vessel in a given fishery in the future. In the current discussion these rights accrue as a result of participation by that vessel in that fishery at some point prior to the transaction.

Specified Transaction: A transaction which specifically details the disposition of fishing rights in the purchase agreement. This kind of transaction may involve both the vessel and the rights or just the rights.

Unspecified Transactions: A transaction transferring vessel ownership from seller to buyer without specific reference to the vessel's fishing history or fishing rights in the purchase agreement. It is assumed that prior to the Current Owner Date, a vessel's history and rights go to the buyer, and that after that date, groundfish and crab license rights remain with the seller.

Retained Fishing Rights: Fishing Rights which have been retained by the seller in a specified transaction.

Transferred Fishing Rights: Fishing Rights which have been transferred to the buyer in a specified transaction.

Buyer: The purchaser of a vessel or fishing rights or both in a given transaction.

Seller: The seller of a vessel or fishing rights or both in a given transaction.

Transfers of Fishing Rights

Most vessel transactions today contain clauses pertaining to the "fishing history" or "fishing rights" of the vessel. The Council acknowledged this practice in the moratorium by instructing NMFS to honor such transactions. Given that the moratorium is so closely linked to the License Limitation Program, it is assumed that the Council wishes NMFS to honor transactions of fishing rights when making determinations regarding licenses. It is suggested that the Council reaffirm that this is indeed their intent. Before doing so, however, the Council should examine "unspecified transactions" and "specified transactions" as defined above, as well as the alternative approach, i.e., to disregard transactions of fishing rights in the implementation of the License Limitation Program.

Unspecified Transactions

As defined above, these transactions involve the transfer of vessel ownership from seller to buyer without specific reference to the vessels fishing history or fishing rights. It is reasonable to assume that, prior to the existence of

limited entry systems, all fishing vessel transactions were "unspecified transactions" and implicitly transferred the right to use that the vessel in the future to the buyer. Therefore it also appears reasonable to assume that even after the advent of limited entry systems elsewhere, an unspecified transaction would transfer at least some fishing rights to the buyer. These fishing rights would allow the buyer to participate in any fishery which is not currently managed under a license or other limited entry program.

Once a license program is implemented, however, fishing rights become embodied in the license. At that point they may become a truly separable asset, not directly tied to the vessel itself, as in the Council's Groundfish and Crab License Limitation Program. After the implementation of the Council's Groundfish and Crab License Limitation Program, an unspecified transaction of a vessel in that fishery will not transfer the license to the buyer. If the license becomes a true asset only after the implementation of the program, then it is reasonable to assume that before then, the vessel's fishing history and fishing rights would stay with the vessel, at least in an "unspecified transaction."

It is likely that most of these types of transactions will be limited to persons less informed and involved in the Council process, or persons new to the fishery. Because fishing history and the disposition of fishing rights are not expressly mentioned in the purchase agreement, informed persons may be able to take advantage of the less informed, e.g., by selling a vessel in an unspecified transaction after the date establishing the license recipient.

Specified Transactions

As defined above "specified transactions" are transactions which clearly detail the disposition of fishing rights. These transactions are a rational reaction by the fishing industry to the prospect of limitations on the entry into fisheries in the future and both buyer and seller are attempting to protect themselves against the uncertainties of the future. Such transactions may involve both the vessel and the rights, or only the rights. Thus "specified transactions" may take three basic forms:

- (1) The vessel and its fishing history and fishing rights are transferred from the seller to the buyer, with specific mention in the purchase agreement that the rights and history are also transferred.
- (2) The vessel is transferred from the seller to the buyer, however the purchase agreement specifically retains the vessel's fishing history and fishing rights for the seller.
- (3) The purchase agreement specifically transfers only the vessel's fishing history and rights from the seller to the buyer. In this transaction the ownership of the vessel in question is not transferred.

In addition, transactions may specify that only a portion of the vessel's history or future rights is transferred in the purchase agreement. For example a transaction may specify that all North Pacific groundfish and BSAI crab history is transferred, but the seller retains all GOA crab history and all fishing history off of Oregon, Washington, and California. This class of transaction, and any other in which rights are retained by the seller, creates multiple catch histories from a single vessel, increasing the likelihood of multiple licenses resulting from a single vessel.

Normally it is assumed that specified fishing history and rights specified are unencumbered by previous transactions, i.e., the purchase agreement covers the vessel's total history and rights. More and more frequently, however, parts of the history and rights may be encumbered in earlier transactions. Take for example the F/V ABC which is sold by fisher X (the original owner) to fisher Y in a specified transaction in which X retains fishing history and rights. Two years later fisher Y sells the F/V ABC to fisher Z in a specified transaction transferring fishing history and rights to Z. Legally, Y does not own the fishing history prior to his ownership of the vessel, so Z's purchase includes only two years of history and only those rights which might have been

generated as a result of those two years of participation. The result is that while there is only one vessel, the F/V ABC, there are now two catch histories, and the potential that two owners (X and Z) may lay claim to future fishing rights and licenses.

Disregard All Transactions of Fishing Rights and Issue Licenses only to Current Owners

The description of specified transactions above, particularly the potential that multiple fishing histories may be generated from a single vessel, makes a strong argument to disregard transactions of fishing rights (specified transactions) in the implementation of the License Limitation Program. This option, at least on the surface, would be easier to implement than the alternative. NMFS would require only proof of vessel ownership as of the "Current Owner" date. No past or future transfers of fishing rights would be acknowledged, including those previously acknowledged under the moratorium. Disputes regarding transfers would need to be settled outside of NMFS, i.e., through private contracts, the courts, or with arbitration.

This option may be significantly complicated by NMFS recognizing transfers of fishing rights as per the Council's request, in issuing moratorium permits. (The "replacement" of one moratorium qualified vessel for another vessel which was previously unqualified is, at a minimum, a transfer of rights to participate in the moratorium.) Disregarding transfers of fishing history and/or fishing rights would create the very real possibility that NMFS would not be able to issue licenses to some vessel owners holding valid moratorium permits. Since the License Limitation Program is so closely linked to the moratorium the Council may wish to be as consistent with that program as possible.

Honor Transactions of Fishing Rights

This option is much more consistent with the moratorium. It could, however, complicate implementation of the license program, as NMFS would have to create standards for transfers of rights and procedures for recognizing those transfers. Additionally, as mentioned above, fishing history transfers could lead to multiple licenses resulting from the participation of a single vessel. These difficulties notwithstanding, the Council staff and NMFS will assume this to be the intent of the Council unless otherwise directed.

If the Council wishes NMFS to honor transactions of "fishing history" or "fishing rights," then it also needs to specify its intent regarding "unspecified transactions": do the rights stay with the seller or are they transferred to the buyer? Unless advised otherwise, the staff is assuming that all fishing history and fishing rights go with the vessel to the buyer in an unspecified transaction prior to the Current Owner Date, and that following that date, rights will remain, in part, with the seller.

Definition of "Current Owner"

This section will discuss the two potential Current Owner Date options, independent of assumptions regarding the recognition of transfers of fishing rights. Two options are described: (1) Date of Final Council Action (June 17, 1995), and (2) Date of License Application.

Date of Final Action (June 17, 1995)

The use of June 17, 1995 as the defacto date for the determination of the "Current Owner" was indicated in the initial proposal of the License Limitation Program provided by the State of Alaska. In that document, it is clear that the proposer's intent was to issue the licenses to owners as of the date of the final Council action. Additionally, there are other compelling arguments favoring this approach. An established date for determination of the eventual license recipient will provide a point of reference for the industry in future decisions to buy or sell vessels, or moratorium rights, or other fishing history rights. Finally, using the date of final Council action will

preclude speculative purchases or claims and provide assurance that the pool of license recipients more closely resembles the industry at the time the Council took its action. In particular it could prevent vessels with a history in the North Pacific, but which have since been sold into foreign ownership, from receiving licenses.

A primary objection to the use of 6/17/95 as the "Current Owner" date is that it would make implementation more difficult. The Council specifically wished to avoid the problems created with issuance of sablefish and halibut IFQs to the owner of vessels at the time landings were made. Determining ownership in the past is more difficult than determining present ownership. By issuing the licenses to "current owners," the Council eliminated the need to track "landings owners." However, if the "Current Owner Date" is established as the date of final Council action, then NMFS will still have to track past, rather than present, owners when they are issuing licenses.

Another problem in choosing 6/17/95 as the "Current Owner" date is the potential inconsistency with the moratorium. Moratorium permits will be issued to the owner at the time of the application. For example, for a vessel in an "unspecified transaction" (i.e., there is no specific mention of fishing rights) after the date of Council action, the new owner (buyer) will be issued a moratorium permit. If the license program is implemented using 6/17/95 to determine the license recipient, the current owner (the buyer) would not be eligible for the license and would have to quit fishing or purchase a suitable license from another party. The previous owner (the seller) would be eligible to receive a license even though he may have retired from the industry. A similar situation could exist if an owner of a moratorium and license qualified vessel transfers the vessel's moratorium permit, without specifying that the transfer also included the concomitant fishing history and future rights for the license. The buyer would have a permit good only for the moratorium.

Unspecified transactions present a particular problem if the license recipient is defined as an owner as of 6/17/95. Assuming that fishing rights normally go to the buyer unless expressly retained by the seller in the purchase agreement, then all unspecified transactions on or before 6/17/95 would transfer all fishing rights to the buyer. All unspecified transactions after 6/17/95 would put limits on the fishing rights transferred to the buyer. The rights to fish in the immediate future, i.e., between June 18, 1995 and December 31, 1995 would go to the buyer. The rights to receive a moratorium permit and to fish in the EEZ under the moratorium would go to the buyer. The rights to fish in various unlimited State managed fisheries would go to the buyer, as well as the rights to fish groundfish and crab in state waters under the Council's License Limitation Program. However, rights to fish in the EEZ, in the event the license program is approved and implemented, would not be transferred to the buyer. These would remain with the seller.

One last argument against the use of the date of final Council action to determine license recipients, is the uncertain nature of the program itself. The License Limitation Program is not part of the groundfish and crab FMP until it is approved by the Secretary of Commerce. Until such time as it is approved the value of retaining or transferring specific rights is uncertain. Additionally, although action by the Council is widely reported, the accepted standard for notification of the public is through the Federal Register. To date no such notice has been published. The process of Secretarial Review, which includes various notices to the public will officially inform potential buyers and seller that future rights to use the vessel may not be guaranteed.

Date of Application

Under this "Current Owner" date option, licenses would be issued to the owner at the time of application. This option reduces the need to track transactions which occurred in the past, and would likely prevent many of the problems seen in documenting ownership under the implementation of IFQs. The preceding paragraph is one of the stronger arguments favoring the use of the date of application to determine the license recipient. Following Secretarial Review and approval, the public and the industry will be amply noticed that following the implementation of the license program, vessel without licenses and endorsements will not be allowed to

participate in the groundfish and crab fisheries in the North Pacific. This will also inform them that, as of the date of application, sales of vessels in "unspecified transactions" will not confer fishing rights to the buyer.

This option has the potential to be less disruptive to the industry in the period prior to the implementation of licenses. Members of the lending community and the fishing industry have indicated that the industry depends in large part on borrowed money. Long-term loans are secured not only for the purchase of vessels, but also for processing and fishing equipment. Shorter-term loans are incurred for annual operating expenses particularly for fuel and nets. If lenders are unable to ascertain that the vessel will have future fishing rights, then they are less likely to provide new funding. This will have a negative impact on the industry as well as the lenders, during the period before implementation.

On the other hand there have been suggestions that if licenses and endorsements are issued to the owner at the time of implementation, then it may hasten foreclosures by aggressive lending institutions. e. This suggestion has been largely discounted by lenders and vessel owners who state that the financial institutions have no interest in owning and managing fishing vessels.

Four Options Regarding License Recipients

Setting the date defining the "current owner" and honoring or disregarding transactions of fishing history and fishing rights simultaneously determines the actual license recipients. The *defacto* assumption is that the "Current Owner" is defined as of 6/17/95, and that transfers of rights are recognized. Further, in cases of "unspecified transactions" before 6/17/95, the fishing history is transferred with the vessel to the buyer. If the transfer occurs after 6/17/95, then the fishing history and fishing rights stay with the seller. If the Council does not wish to take further action, NMFS will implement the program under those assumptions. There are, however, four distinct options, from which the Council could choose, if they wish to re-evaluate. These are:

- A: "Current Owner" is defined as of the date of final Council action. Transfers of rights are not recognized.
- B: "Current Owner" is defined as of the date of application. Transfers of rights are not recognized.
- C: "Current Owner" is defined as of the date of final Council action. Transfers of rights are recognized.
- D: "Current Owner" is defined as of the date of application. Transfers of rights are recognized.

The following table lists 13 hypothetical vessel transactions or scenarios, and shows the moratorium and license recipients under the four "Current Owner" date and rights transfer options.

OPTIONS

Option A: "Current Owner" is defined as of the date of final Council action. Transfers of rights are not recognized.

Option B: "Current Owner" is defined as of the date of application. Transfers of rights are not recognized.

Option C: "Current Owner" is defined as of the date of final Council action. Transfers of rights are recognized.

Option D: "Current Owner" is defined as of the date of application. Transfers of rights are recognized.

ASSUMPTIONS: 1) The vessel in question is 58' LOA and is moratorium qualified for groundfish and crab. 2) The vessel would be qualified for groundfish and crab endorsements based on landings history through 1994. 3) The vessel made pot landings of cod during the first four months of 1995. 4) Fishers X and Y are eligible to document a fishing vessel in the United States. 5) Fisher Z is not eligible to document a fishing vessel in the U.S.

Scenarios				Moratorium Permit Issued to	License and Endorsement recipients under "Current Owner Date" and Transfer Options			
#	Action	Date of Action	Fishing Rights		A	B	C	D
1	X sells to Y	1/1/95	unspecified	Y	Y	Y	Y	Y
2	X sells to Y	6/18/95	unspecified	Y	X	Y	X	Y
3	X sells to Y	1/1/95	transferred	Y	Y	Y	Y	Y
4	X sells to Y	6/18/95	transferred	Y	X	Y	Y	Y
5	X sells to Y	1/1/95	retained	X	Y	Y	X & Y	X & Y
6	X sells to Y	6/18/95	retained	X	X	Y	X	X
7	X sells to Z	6/1/95	unspecified	None	None	None	None	None
8	X sells to Z	6/18/95	unspecified	None	X	None	X	None
9	X sells to Z	6/1/95	transferred	None	None	None	None	None
10	X sells to Z	6/18/95	transferred	None	X	None	None	None
11	X sells to Z	6/1/95	retained	X	None	None	X	X
12	X sells to Z	6/18/95	retained	X	X	None	X	X
13	X sells to Z on 6/1/95. Z sells the rights to Y on 6/18/95.			Y	None	None	None	Y

Each scenario in the table depicts the transfer of a 58' vessel which is both moratorium qualified and license qualified. The vessel has fished groundfish with trawls and pots, and crab with pots, in each year from 1988 through April 1995. In all scenarios fisher X is the original vessel owner, and in six cases sells the vessel to fisher Y, both citizens eligible to document a fishing vessel in the United States. In seven cases X sells the vessel to fisher Z who is not eligible to document a fishing vessel in the United States.

Each scenario differs either by date of the transaction, disposition of fishing rights, or eligibility of the buyer to document a fishing vessel in the U.S. Three different dates were chosen for the hypothetical transactions depending on the buyer. Fisher Y buys either on January 1, 1995 or on June 18, 1995, i.e., before or after the date of final Council action. Fisher Z also buys either before or after the date of final Council action, but since the vessel fished in 1995 through April we assume that Z (who is not a U.S. citizen, and therefore could not have fished) purchases either on June 1, 1995 or on June 18, 1995. In each case the fishing rights are unspecified, specifically retained, or specifically transferred.

Scenario 1 is very straight forward; the vessel is sold to Y in a simple "unspecified transaction" prior to Council action in June 1995. Under each license recipient option as well as the under the moratorium, Y will receive the access to the fishery. Scenario 3 produces the same result because the specified transaction is identical to an unspecified transaction, given the assumption that an unspecified transaction prior to "Current Owner" date transfers all fishing history and rights to the buyer.

If the vessel had been sold on 6/19/95 in an unspecified transaction as in scenario 2, then Y would receive the moratorium permit, but X would receive the license and endorsements under Options A and C, both of which use the date of final Council action to determine the current owner. If the license and endorsement are issued to the owner on the date of application as in Options B and D, then Y would be the recipient.

Scenario 4 highlights a problem with choosing Option A in which rights and history transfers are not recognized. Y purchases the vessel after the "Current Owner" date in a "specified transaction" transferring the fishing history and rights to Y. However, since Option A does not recognize these transfers, the license will be issued to X. Scenario 6, like scenario 4, demonstrates the effects of the non-recognition of fishing history transfers. In this case X will not receive a license under Option B even though the fishing history and rights were specifically retained.

Under scenario 5, two owners have fishing history which would qualify the vessel for a license. Y's fishing history includes the pot landings made in 1995, while X's history, which was specifically retained in the transaction, is more than adequate to meet license qualification requirements. Therefore, under Options C and D, which recognize transfers of fishing history and fishing rights, both X and Y receive licenses. Scenario 5 is one of many possible scenarios which result in multiple licenses being issued as a result of the participation of a single vessel. As noted earlier, this is one of the major shortcomings of the recognition of transfers of fishing history regardless of the "Current Owner" date chosen. This scenario demonstrates that it is possible to be qualified for a license, but not eligible to receive a moratorium permit. Fisher Y will not be able to use his vessel during the moratorium (except in state waters), but will be issued licenses when that program is implemented.

Scenarios 7-12 are identical to scenarios 1-6, except that the vessel is transferred to fisher Z who is ineligible to document a fishing vessel in the United States. Many of these scenarios demonstrate the peculiar effect of the "disappearance" of fishing history with respect to the moratorium and license programs. When a vessel is transferred with its fishing history and rights, to an owner which is ineligible to document a vessel in the U.S., and the transaction occurs prior to the date establishing the license recipient, then its fishing history in effect disappears, and no moratorium permit or licenses will result. In cases where the fishing history is retained by the U.S. citizen or transferred back to a U.S. Citizen (scenarios 11-13), moratorium permits will be issued as would licenses under Option D. Scenario 13 is somewhat of a special case, similar to scenarios 7 and 9 except that a second transaction occurs whereby Y purchases only the rights from Z. In this case fisher Y would be issued a moratorium permit, and a license and endorsements if Option D were chosen.

Consistency with the Moratorium

Comparing columns containing the outcomes under the various scenarios demonstrates the relative consistency of the four license recipient options with the moratorium. It is clear that Option D is the most consistent with the moratorium, treating each scenario (with the exception of scenario 5) in the same way. Under scenario 5 an additional license is generated because of the extended qualifying period given to pot and jig vessels, and the recognition of transfers of fishing history and fishing rights.. Because both the moratorium and Option D issue licenses or permits to the "current owner" as of the date of application, the consistency between the two is not unexpected. There are, of course, scenarios possible in which the moratorium permit recipient is not the license recipient under Option D. These would involve transfers after the initial moratorium permits are issued or the case where a moratorium qualified vessel is not also license qualified.

Option C produces three mismatches with the moratorium and the additional license issued under scenario 5 to Y. Thus it appears to be fairly consistent with the moratorium. The differences occur in scenarios 2, 8, and 13. In scenarios 2 and 8, the transfer of the vessel occurred after the date of final Council action, which under Option C determines the license recipient. Under scenario 2, Y will receive the moratorium permit but will not be allowed to fish after the implementation of the License Program. Fisher X will not be involved in the fishery in the last half of 1995 and during the moratorium, but nonetheless will receive the license and endorsements. Similarly, under scenario 8 fisher X will receive a license after being absent from the fisheries for several years. In this case however, no moratorium permit would be issued. Finally, Option C would not issue a license and endorsements to fisher Y under scenario 13.

Option A and B are the least consistent with the moratorium. Option A produces mis-matches in 7 of the 13 scenarios and Option B produces 5 mis-matches. These options could prove fairly disruptive to the industry particularly during the period before the implementation of the license program.

Equity Issues

In addition to examining the options for consistency, it may be appropriate to examine the options in terms of equity or fairness. Two points of reference are apparent:

1. How does each option deal with unspecified transactions and how equitably would each treat the "uninformed" which are more likely to be involved in these transactions
2. How equitably does each option deal with persons who in good faith entered into transactions which specified the transfer of fishing history and fishing rights?

Equitable Treatment of the Uninformed

Options B and D appear to be more equitable to the "uninformed" because they allow more time and public process to occur before the "current owner" is defined. The application date will not occur before completion of the full Secretarial Review process, which will include several notices in the Federal Register. The Federal Register is the official instrument of the U.S. Government to notify the public of decisions which may affect them. Additionally, using the date of application to define "current owners" will eliminate the need to redefine the seller as the assumed owner of the fishing history and fishing rights in unspecified transfers, based on a program which at this point has not yet been fully approved.

Equitable Treatment of Persons Who Made Good Faith Transactions of History and Rights

Options C and D explicitly recognize and honor transfers of fishing rights and fishing history specifically expressed in purchase transactions. Therefore persons who have entered into these agreements will generally be treated similarly under each option. Exceptions to this are found in transactions to persons, such as fisher Z above, who are unable to document fishing vessels in the United States. These persons may have entered into good faith transactions with the knowledge that a license program was imminent in the North Pacific. It is likely that if the fishing rights were expressly transferred in the purchase agreement, that additional expense was incurred. Option C would deny these persons the ability to resell the fishing history and rights to a U.S. citizen.

Conclusions

Options A and B do not appear to be reasonable, particularly given the treatment of persons entering into good faith transactions of fishing history and rights. Both of these do, however, prevent the phenomena of multiple licenses resulting from a single vessel. Additionally, Option B in particular will prevent vessels which have been sold into foreign ownership from receiving licenses.

Option C, which is assumed to be the *defacto* intent of the Council, defines the "Current Owner" as of the date of final Council action (6/17/95) and recognizes transfers of fishing history and fishing rights. This option is less consistent with the moratorium than option D, but more consistent than the Options A and B. This option would provide equitable treatment of U.S. citizens entering into good faith transactions, but could be viewed as less than fair with respect to non-U.S. citizens and companies. This option may not provide equitable treatment for the uninformed. This option would provide protection against aggressive foreclosures, but could in the short-run harm the ability of vessels to get financing.

Overall it appears that Option D, which defines the "Current Owner" as of the date of application and recognizes transfers of fishing history and fishing rights, is the most consistent with the moratorium. This option also provides equitable treatment to the "uninformed" who have entered into "unspecified transactions," and gives fair treatment to persons who have entered into good faith transactions of fishing rights. Overall this option appears to be the least disruptive to the industry. On the other hand, Option D could allow multiple licenses to result from a single vessel, and could allow vessels which have been sold into foreign ownership, to be re-sold into U.S. ownership, and receive licenses and endorsements. Estimates of the number of these potential occurrences cannot be made now.

Qualification of Lost Vessels Under the Moratorium and License Programs

Between the June and September Council meetings at least five fishermen have written the Council asking that they reconsider the license program's lost vessel provisions. Three of the letters were from crab vessel owners and two were from owners of groundfish vessels. The authors of these letters are concerned that by following the rules of the proposed moratorium they may not qualify for any or enough endorsements under the license program to operate a viable fishing operation.

The moratorium grants vessel owners two years after the program's implementation date to qualify for a permit by making a landing of a moratorium species. Assuming the effective date of the moratorium is January 1, 1996, these vessels would have until December 31, 1997 to qualify. However, the license program does not grant these vessels the privilege to earn endorsements beyond December 31, 1994 for crab and June 17, 1995 for groundfish. The difference in the cut-off periods between the moratorium and license program is the source of these fishermen's concern. For example, four of the letters indicate the vessel was lost between 1989 and 1991. These vessels could still go fishing in 1996 or 1997 and qualify for the moratorium. However if the license program were to go into affect in 1998, these vessels would not qualify. Table 1 provides the critical dates for lost vessels in both the moratorium and license programs.

Table 1. Lost vessel rules under the moratorium and license programs

Program	Date Vessel Was Lost or Destroyed	Vessel Eligible for Permit	Salvage Must Have Begun on or Before	Date Salvaged/Replacement Vessel Must Make Landings to Receive a Permit
Moratorium	Before 1/1/89	Salvaged	6/24/92	Within Two years of the Moratorium's Effective Date
Moratorium	on or after 1/1/89	Replacement /Salvaged	n/a	Within Two years of the Moratorium's Effective Date
License - Groundfish	1/1/88 - 6/17/95	Replacement /Salvaged	n/a	1/1/92 - 6/17/95*
License - Crab	1/1/88 - 6/17/95	Replacement /Salvaged	n/a	1/1/92 - 12/31/94*

* General provision #8 in the License Limitation program allows replacement/salvaged vessels to receive endorsements for any species/area fished during the endorsement qualifying period. These vessels will not be subject to the minimum landings requirements imposed on other vessels within that class. Lost vessels that reentered the fishery and participated during most of the endorsement period may benefit from this provision and have advantages over vessels that were never lost.

Owners of vessels that sank before or during the license programs endorsement qualifying periods (1/1/92 - 12/31/94 for crab and 1/1/92 - 6/17/95 for groundfish) are requesting that the Council reconsider the qualifying dates for earning endorsements. Or, if the Council does not which to reconsider the endorsement period dates for lost vessels, another suggestion was to develop a mechanism that would grant them adequate endorsements to continue fishing. The vessel owner's rationale for making this request falls into three basic categories.

- 1) Owners were delaying off investing in a vessel, or were unable to obtain financing, until they found out if the moratorium and comprehensive rationalization programs would be passed and the programs would enable them to continue fishing.
- 2) Their vessel was unable to operate during some or all of the endorsement qualifying period, so they did not have the same opportunity to qualify for endorsements as other vessel owners.

- 3) The shortened endorsement qualifying period did not allow them to earn adequate endorsements, so they will be unable to secure financing to reconstruct their vessel.

The following suggestions were taken from industry letters and staff discussions and are some potential solutions to the problem.

- 1) Grant crab fishermen a package of endorsements for the Bering Sea that would include Bristol Bay red king crab, *C. bairdi*/*C. opilio*, and either St. Matthew blue king or Pribilof red and blue king crab.
- 2) Issue endorsements for those species/areas fished during the base qualifying period (1/1/88 - 6/27/92).
- 3) Extend the endorsement qualifying period through two years after the effective date of the moratorium, for lost vessels.
- 4) Do nothing. If the Council does not take action on this item then the license limitation program will be implemented as it currently exists.

Discussion of Crossover Qualification in License Limitation Program

The groundfish and crab license system approved last June has two qualifying periods that determine a vessel's combination of licenses and endorsements:

1. License areas depend on landings during a Base Period, January 1, 1988 through June 27, 1992 (a modified moratorium period).
2. Endorsement areas depend on landings in a more recent, but slightly overlapping, Endorsement Period, January 1, 1992 through June 17, 1995 for groundfish and January 1, 1992 through December 31, 1994 for crab.

If the base and endorsement period areas are partially mismatched, the base period has precedence in determining the license area(s). Thus a vessel with base landings in the BSAI and endorsement landings in both the GOA and BSAI, will receive only a BSAI license and appropriate BSAI subarea endorsements. If there is no area common to both periods, the endorsement period has precedence and the vessel would receive a general license for the FMP area fished during the endorsement period.

The Council further stipulated that pot/jig vessels with endorsement period landings, but no base period landings, would still receive a license (and endorsement) for one FMP subarea of their choice, that they had fished during the endorsement period.

Last, there is the situation of crossover vessels which may have fished crab in the BSAI during the base period, and groundfish in the BSAI and/or GOA during the endorsement period. It is this last situation for which we need Council clarification on rules of precedence for the various permutations of licenses and endorsements that may arise for crossover vessels. While the Council's decision on precedence will not significantly impact fleetwide distribution of effort and fishing capacity, it will critically impact the fishing opportunities of the 53 vessels in the crossover situation. The various situations and some proposed solutions are presented below.

Four Situations for Crossover Vessels

The four possible pairings of base and endorsement period qualifications for crossovers are shown for 53 vessels in the top four rows of Table 1. The last two rows are for reference purposes only to show what happened to the 40 purely groundfish vessels that fished one FMP area during the base period and both FMP areas during the endorsement period. The Council's June 1995 action restricts these vessels to endorsements only in the FMP area in which they fished in the base period. The net result was that they had to relinquish nine GOA endorsements and 38 BSAI endorsements.

Table 1.

Base Period Catch History	Endorsement Period Catch History	Vessels	Potential Endorsements	
			BSAI	GOA
BSAI Crab & GOA Groundfish	BSAI & GOA Groundfish	24	25	35
BSAI Crab	BSAI & GOA Groundfish	23	24	20
BSAI Crab	Vessels <60' with GOA pot/jig landings	2	0	3
BSAI Crab	Vessels <60' with BSAI/GOA pot/jig landings	4	4	4
BSAI Groundfish	BSAI & GOA Groundfish	9	13	9
GOA Groundfish	BSAI & GOA Groundfish	31	35	55

Shaded endorsements would not be issued under this scheme.

Situation 1: Row 1 shows the 24 vessels which fished BSAI crab and GOA groundfish in the base period, and groundfish in both areas in the endorsement period. It is clear that the area match in the Gulf gives these vessels a Gulf license and Gulf endorsements as appropriate based solely on groundfish landings. The question is whether they should also receive a BSAI groundfish license based on their crab landings during the base period. We have assumed that, because of the Council's crossover provisions and the vessels' crab landings in the BSAI during the base period, that receipt of a Gulf groundfish license does not preclude them from also receiving a BSAI groundfish license. In summary, unless otherwise directed by the Council at this September meeting, the proposed rule will be written to grant these 24 vessels groundfish licenses and appropriate endorsements for both the BSAI and GOA.

Situation 2: Row 2 shows 23 BSAI crabbers that made groundfish landings in either one or both major FMP areas during the endorsement period. Should they receive a license for both FMP areas, even though they had no base period landings in the GOA? On the one hand, it could be argued that because the Council's crab management is limited to the BSAI, there was no potential for crabbers to have qualified in the base period on any other crab landings than those in the BSAI. Further it could be argued that, because the vessels had developed more recent dependence on groundfish landings in both the Gulf and BSAI, they should be entitled to receive a general license to operate in both areas. Conversely, giving BSAI crabbers a license for both the BSAI and GOA may appear to give them extraordinary treatment over the forty purely groundfish boats in rows 5 and 6 that had to relinquish endorsements, even though they may have grown dependent on those fisheries.

There basically are three alternatives for addressing this situation:

1. Require the 23 BSAI crabbers who crossed over into both the BSAI and GOA groundfish fisheries during the endorsement period to relinquish their 20 GOA endorsements and receive only a BSAI license and endorsements.
2. Grant the 23 BSAI crabbers licenses in both FMP areas.
3. Reconsider treatment of the 40 groundfish vessels that lost endorsements and allow them licenses and endorsements for both FMP areas.

In considering the alternatives, the Council should weigh consistency (should crab and groundfish participation in the base period be treated identically in terms of earning endorsements?) against the possibility that very good reasons may exist to treat these two fisheries somewhat differently. In order to be strictly consistent, BSAI crab fishery participation in the base period would not grant the vessel eligibility to receive groundfish endorsements in the GOA. This would be consistent in that, like the 40 vessels in rows 5 and 6, they would be required to have fished groundfish in the GOA during the base period to receive a Gulf license, and they would relinquish Gulf endorsements.

Conversely, consistency could be achieved by granting all endorsements to the 40 groundfish vessels in rows 5 and 6, thereby mooted the dual qualification criteria which was directed at the groundfish participation. Under this scenario, the 'umbrella license' concept can still be retained in the event the program is amended in the future to allow separation and transfer of endorsements; the total number of vessels will still be limited.

On the other hand, the Council may well want to treat base period participants in the BSAI crab fishery differently than base period groundfish participants, for the following reasons: (1) allowing such participation to qualify a vessel for all endorsements most fully expresses the crossover intent of the moratorium and license programs; (2) There is no GOA crab fishery in which those vessels could have earned either endorsements or license qualification; (3) The current depressed state of the BSAI crab fisheries may provide a good reason to recognize more recent dependence on groundfish fisheries, in all areas; (4) It is a very small number of vessels which would benefit from the differential treatment; i.e., very few new endorsements are issued overall, but they may be critical to those vessels.

Small Pot/Jig Vessels

Situations 3 and 4: There are six BSAI crabbers, under 60 ft, that made pot/jig landings of groundfish during the endorsement period in just the Gulf (Row 3; two vessels), or in both the Gulf and BSAI (Row 4; four vessels). Do they get umbrella groundfish licenses for one or both areas? Again this is not a matter of significant capacity, but the outcome will have critical impacts on future operations and value of the six vessels.

You'll recall that the rule for the other jig/pot vessels which had only endorsement period landings, but no base period landings, was that they were allowed to choose one FMP subarea they had fished during the endorsement period, and thus receive the accompanying umbrella license for the broader FMP area. The following alternative solutions are similar to those presented above for vessels in Situation 2, and very well could depend on the Council's decision on those vessels:

1. For the two BSAI crabbers (Row 3) that fished groundfish in only the GOA during the endorsement period, make them choose either a BSAI or GOA license. This would be more consistent with the choice given other pot/jig vessels.
2. For the two vessels, restrict them to a groundfish license only in the GOA because that is their more recent practice.
3. For the two vessels, give them both groundfish licenses, one each in the GOA and BSAI, because they had fished both major areas since 1988, and their individual incremental capacity is inconsequential to either area.
4. For the four BSAI crabbers (Row 4) with endorsement landings of groundfish in both GOA and BSAI, make them choose a single umbrella area.
5. For the above four vessels, give them both umbrellas.
6. For the above four vessels, restrict them to just the BSAI because that is the only area common to both the base endorsement periods.

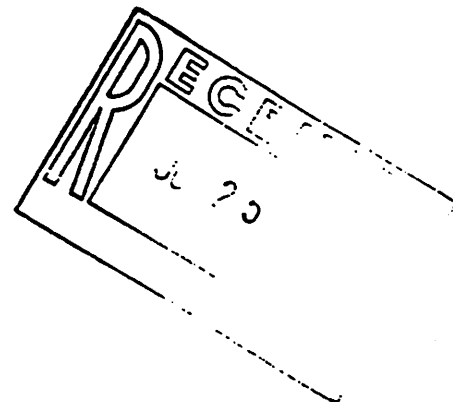
The staff is seeking clarification from the Council on how to treat the above situations in the proposed rule. Table 2 provides additional information on the vessels presented in Table 1. This information includes the vessel owner's state of residence, the vessel's length class, and the vessel's catcher vessel or catcher processor designation.

Table 2

Base Period	Endorsement Period	Alaska						Total
		Catcher Vessels			Catcher Processor			
		<60'	60-125'	>=125'	<60'	60-125'	>=125'	
BSAI Crab & GOA Groundfish	BSAI & GOA Groundfish	8	10	1	0	0	0	19
BSAI Crab	BSAI & GOA Groundfish	0	6	1	0	0	0	7
BSAI Crab	Vessels <60' w/GOA pot/jig landings	2	0	0	0	0	0	2
BSAI Crab	Vessels <60' w/BSAI/GOA pot/jig landings	3	0	0	0	0	0	3
BSAIGroundfish	BSAI & GOA Groundfish	0	0	0	0	0	1	1
GOA Groundfish	BSAI & GOA Groundfish	21	2	0	1	0	0	24
Total		34	18	2	1	0	1	56
Base Period	Endorsement Period	Other States						Total
		Catcher Vessels			Catcher Processor			
		<60'	60-125'	>=125'	<60'	60-125'	>=125'	
BSAI Crab & GOA Groundfish	BSAI & GOA Groundfish	1	4	0	0	0	0	5
BSAI Crab	BSAI & GOA Groundfish	1	13	2	0	0	0	16
BSAI Crab	Vessels <60' w/GOA pot/jig landings	0	0	0	0	0	0	0
BSAI Crab	Vessels <60' w/BSAI/GOA pot/jig landings	1	0	0	0	0	0	1
BSAI Groundfish	BSAI & GOA Groundfish	2	2	1	0	2	1	8
GOA Groundfish	BSAI & GOA Groundfish	4	0	0	0	3	0	7
Total		9	19	3	0	5	1	37
Base Period	Endorsement Period	Total of all States						Total
		Catcher Vessels			Catcher Processor			
		<60'	60-125'	>=125'	<60'	60-125'	>=125'	
BSAI Crab & GOA Groundfish	BSAI & GOA Groundfish	9	14	1	0	0	0	24
BSAI Crab	BSAI & GOA Groundfish	1	19	3	0	0	0	23
BSAI Crab	Vessels <60' w/GOA pot/jig landings	2	0	0	0	0	0	2
BSAI Crab	Vessels <60' w/BSAI/GOA pot/jig landings	4	0	0	0	0	0	4
BSAI Groundfish	BSAI & GOA Groundfish	2	2	1	0	2	2	9
GOA Groundfish	BSAI & GOA Groundfish	25	2	0	1	3	0	31
Total		43	37	5	1	5	2	83

**COPY FOR YOUR
INFORMATION**

July 15 1995



**Steve Pennoyer, Regional Director
NMFS, Alaska Region
Post Office Box 21668
Juneau, Ak 99802**

Dear Mr. Pennoyer:

A matter has come to my attention that threatens to prevent me from continuing my livelihood in Bering Sea crab fisheries. I understand that there may be an inconsistency in the treatment of lost vessels by the recently approved vessel moratorium and the proposed license limitation system for groundfish and crab fisheries off the coast of Alaska. I am requesting a ruling from you concerning the effect of the moratorium, as approved, and proposed license system, if implemented, on my particular circumstances.

The F/V DISCOVERY, which I owned, sank October 7, 1991, while en route to Bristol Bay for the red king crab opening. The vessel (ADF&G No. 32849; USCG No. 596816) was 97 feet LOA and 192 gross tons. It was built in 1978 and was operated in the fisheries of the United States for 14 years.

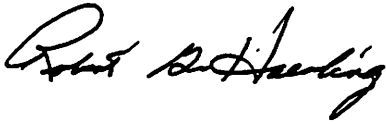
As I understand it, the moratorium would allow me to replace the lost vessel for future participation in the affected fisheries, if the replacement vessel (of similar capacity) makes a legal landing within two years following implementation of that administrative rule. However, I understand that the present wording of the proposed license system would, if implemented, shorten that period, insofar as the receipt of qualified endorsements is concerned. A substantially shortened period under the proposed license system would make it impossible for me (and other vessel owners in similar circumstances) to reenter the fisheries as permitted by the moratorium. My qualified endorsements through 1991 would include Bristol Bay red king crab, St. Matthews Island blue king crab, and Bering Sea bairdi and opilio crab.

The proposed license system with the 1992-1994 endorsements period would provide me with no fishing endorsements come January 1, 1997. I am unaware of any administrative record for the proposed license system that would support a change of policy with respect to lost vessels from that which prevails, and upon which I have a right to rely, under the approved moratorium. It is my hope that the indicated policy change is unintended, and that the scheme established by the moratorium will not be effectively altered by the license system.

I would be grateful if, at your earliest opportunity, you would advise me concerning this matter. I simply cannot acquire financing to replace the lost vessel, if I am unable to secure the needed endorsements mentioned above to resume fishing. I would like to have your assurance that the proposed license system, as finally implemented, will provide me

with those endorsements.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert G. Haerling".

Robert G. Haerling
Post Office Box 339
North Powder, OR 97867

cc: Rick Lauber, Chairman, NPFMC

DARJEN, INC.

F/V Alaska Spirit
David Jentry - Capt.

P.O. Box 3128
Kodiak, Alaska 99615

Telephone/Fax
907-486-5205

July 19, 1995

NPFMC
Richard Lauber, Chair &
Clarence Pautzke, Executive Director

Dear Mr. Pautzke and Mr. Lauber,

My name is David Jentry and I have lived in Kodiak Alaska for seventeen years. I own and operate my own fishing vessel. My primary fishery was dragging until 1991. In February of 1991, my boat, F/V Holy Cross, sank in the Bering Sea. I did not find a replacement vessel until October 1993 and then it was a crab boat with dragging capabilities.

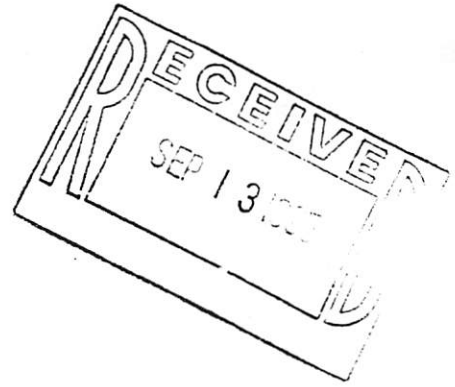
Without a clear picture of where the council was going with its management plan, it would have been foolish of me to consider spending money to convert to dragging with the advent of I.F.Q.'S.

The qualifying window for the groundfish license limitation program catches me in a unique situation. Although I was a dragger for over 25 years, under these special set of circumstances, I will no longer be allowed to participate in the groundfish fishery.

I respectfully request that you give me and others like me, who have lost their boat during the period for the qualifying window additional consideration. I would have been dragging had it not been for all the confusion about the I.F.Q. system.

Sincerely,

David Jentry



September 6, 1995

Steve Pennoyer, Regional Director
NMFS, Alaska Region
P.O. Box 21668
Juneau, AK 99802

Dear Mr. Pennoyer:

I have been involved in Bering Sea and Aleutian Islands crab fisheries for more than 30 years and a vessel owner for more than 20 years. On March 20, 1990 I lost the vessel Alaskan Monarch (ADF&G #38714) at St. Paul Island.

Since then, I have been following the protracted developments on the moratorium, all the while anticipating that I would be able to replace the vessel within two years of the implementation date of the moratorium. The moratorium final rule does provide vessel owners with a two year time period in which to replace a vessel and make one or more landings.

However, the new proposed license system with the 1992-1994 endorsements period presents two major problems for me that will make it almost impossible to secure financing for a replacement vessel.

1) If the license program is implemented as proposed on January 1, 1997, that will reduce my endorsement period to a little over a year. This severely restricts me in terms of time required for planning and construction of a new vessel and then requalifying the vessel.

2) Even if I were to replace a vessel, under the proposed license system, I would be ineligible to fish crab in any Bering Sea crab fisheries since the vessel made no landings during the endorsements period. However, the Alaskan Monarch, built in 1979, had eleven years of historic participation in crab fisheries and under normal circumstances would have qualified for Bering Sea and Adak registration areas.

I would like to request that the NMFS and NPFMC, at the September 1995 meeting, resolve the issue of inconsistency between the moratorium and the license program in regards to the time period for replacement of lost vessels and the requalifying lost vessels for their normal fishing endorsements. This needs to be resolved in September so myself and other vessel owners in similar circumstances can make financial arrangements for replacing and requalifying vessels by the stated deadlines.

Sincerely,

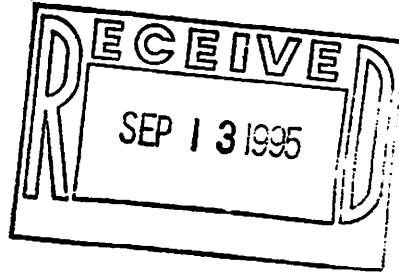


Morris Hansen

KODIAK & WESTERN TRAWLER GROUP

P. Harville
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Kodiak, AK 99615

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September 1, 1995

The Honorable Ron Brown
Secretary of Commerce
14 Street between Constitution
Avenue & E Street
Washington, D.C. 20230

Via Fax and Mail

Dear Mr. Secretary,

This will serve as a followup to my previous letter regarding fishing rights for the F/V Little Bear.

As I stated previously the F/V Little Bear, a North Pacific trawler, sank in a storm in 1989. My partner and I elected not to replace the vessel, but rather to put the insurance proceeds in the Capital Construction Fund awaiting signing of the fishing vessel moratorium.

We knew that under the moratorium, if signed, that we would have two years to replace our lost vessel and this has become a fact. However, the North Pacific Fisheries Management Council has voted a limited entry program that will exclude the replacement vessel from fishing.

Despite the fact that I have testified on several instances before the Council asking that they address this situation, we were ignored.

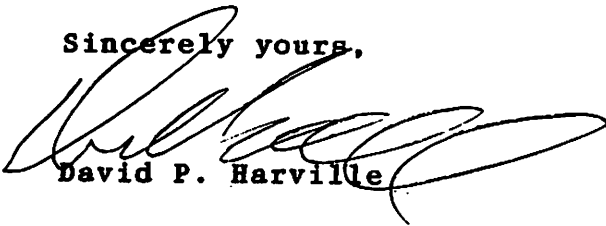
The simple matter of fact is I have the right under the moratorium to replace the F/V Little Bear, but I do not have the right to fish the replacement vessel under the proposed limited entry program.

There are, I understand, a very small number of vessels (less than eight I believe) also affected. I feel that this is unfair and perhaps illegal.

I have been putting money in the Capital Construction Fund believing that under Comprehensive Rationalization I would have the right to replace the vessel and fish the vessel.

I respectfully request that included in the limited entry and/or ITQ programs that we be allowed to replace our vessels and fish them in the fisheries they historically fished.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David P. Harville", written over a printed name.

David P. Harville

cc: Senator Stevens
Senator Murkowski
Rep. Don Young
Dave Whaley
Chairman NPFMC

September 5, 1995

Steve Pennoyer, Regional Director
NMFS, Alaska Region
P.O. Box 21668
Juneau, Alaska 99802

Dear Mr. Pennoyer:

I am a vessel owner involved in Bering Sea crab fisheries and I lost the vessel *Netti H* enroute to the Pribilof Islands king crab fishery on September 13, 1993.

It has recently been brought to my attention that there is an inconsistency in the treatment of lost vessels by the recently approved moratorium and the proposed license limitation system for groundfish and crab fisheries off the coast of Alaska. I am requesting consideration from you and the NPFMC concerning the effect of the moratorium, as approved, and the proposed license system, if implemented, on my particular circumstances.

The moratorium apparently allows me to replace the lost vessel for future participation in the fisheries off the coast of Alaska, if the vessel makes a legal landing within two years following implementation of the rule (by December 31, 1997). However, the proposed license system, if implemented on schedule by January 1, 1997, effectively gives me only a little more than a year to requalify the vessel for endorsements. A substantially shortened period under the proposed license system would make it impossible for me (and other vessels in similar circumstances) to acquire adequate financing to replace the lost vessel and to requalify for endorsements as permitted by the moratorium. My endorsements through 1992 were restricted to Bristol Bay red king crab and Gulf of Alaska groundfish. However, the vessel had registered for the 1993 Pribilof Islands red king crab fishery and we planned to fish the vessel in Bristol Bay red king crab and Bairdi that fall.

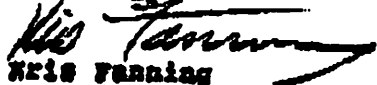
The proposed license system with the 1992-1994 endorsements would provide me with only one crab endorsement. That coupled with the January 1, 1997 deadline to requalify a replacement vessel, will effectively prevent me from replacing the lost vessel in the Bering Sea crab fisheries. I am unaware of any administrative record for the proposed license system that would support a change of policy with respect to lost vessels under the approved moratorium.

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It is my hope that the policy change is merely an oversight, and that some consideration can be provided in the license system to allow for replacement vessels to qualify for a package of endorsements that would allow for the owners and crew to earn a livelihood. A suggested Bering Sea package of crab endorsements (for participants earning a livelihood from crab) would be Bristol Bay red king crab, combined bairdi-opilio and either/or, St. Matthews or Pribilofs king crab, three endorsements for four fisheries.

I hope the NMFS and NPFMC will consider the situation of lost vessels at the upcoming September 25th NPFMC meeting in Seattle.

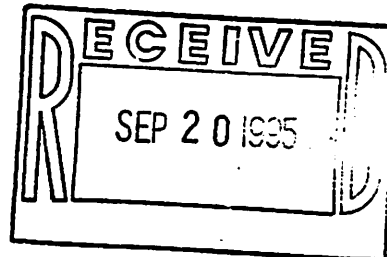
Sincerely,


Kris Fanning
1900 West Nickerson, #201
Seattle, WA 98119-1650

cc: Clarence Fautzke, NPFMC.

**AMERICAN SEAFOODS COMPANY**

Mr. Rick Lauber, Chairman
North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, Ak. 99510



September 20th, 1995

I am writing to request your consideration of one of the consequences of the License Limitation plan as approved at the June Council meeting. One of the vessels that we own, the American Challenger (ex Linda Rose), is a small, 108 ft. groundfish catcher-processor. It has extensive catching and processing history in both the Bering Sea and Gulf of Alaska throughout 1991, 1992, and 1993. In 1994 the bank took the vessel back and it was not able to fish that year. American Seafoods purchased the vessel at the end of 1994 and had only enough time to prepare the vessel for pollock harvesting in a mothership operation in the 1995 Bering Sea pollock A season. We are currently in the process of overhauling the processing equipment on the Challenger in preparation for head & gut and fillet production.

The effect of the new requirements as approved at the June Council meeting will render useless the processing capabilities of the American Challenger though. Under the Advisory Panel's recommendations the Challenger would have qualified as a catcher-processor in both the Bering Sea and Gulf of Alaska. Under the current Council plan the Challenger would not be able to process groundfish anywhere.

The Challenger is also being considered as an investment opportunity in the CDQ program. This investment would be a valuable opportunity for development of fisheries expertise for Western Alaskan residents, and as a means to participate not only in the pollock CDQ fishery but also in the other groundfish CDQ fisheries approved under the License Limitation program.

We question the rationale and purpose of the requirement for the "most recent year of participation" during the Endorsement Qualifying Period (EQP) for License Designations. Since there is already a Qualifying Period for General Licenses of 1/1/88-6/27/92 and a Qualifying Period for Area Endorsements of 1/1/92-6/17/95 (the Challenger meets both of these requirements), why have a different qualifying period for CV/CP designations? Up until May 1995 the qualifying criteria being considered was the "activity in the three years prior to June 24, 1992". The 1/1/94-6/17/95 qualifying period seems to be a requirement added only recently (which makes it difficult if not impossible to qualify for), and an unnecessary burden inconsistent with the other qualifying dates.

Under the scenario currently being considered, the Challenger will be out of business. We are asking the Council to consider the qualifying periods for General Licenses and Area Endorsements as sufficient to qualify vessels for License Designations, or to consider the "most

**AMERICAN SEAFOODS COMPANY**

Market Place Tower 2025 First Ave. Suite 900 Seattle, Washington 98121
(206) 448-0300 FAX (206) 448-0303

recent year of participation" to be a "full year of vessel activity", exclusive of periods of bankruptcy. Thank you for your attention to this matter.

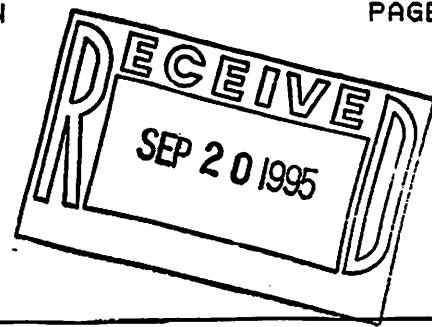
Best regards,



Jan Jacobs
Fleet Manager
American Seafoods Co.



ALASKA CRAB COALITION



3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (208) 547-0130

DATE: September 20, 1995

TO: Rick Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

FROM: Arni Thomson, Executive Director *Arni Thomson*

RE: AGENDA ITEM C-3(b) LICENSE SYSTEM, LICENSE
WILL BE ISSUED TO CURRENT OWNERS AS OF 6/17/95,
(Date of Council Final Action)

During the course of its deliberations on the License Limitation program on June 16th, 1995, the North Pacific Fishery Management Council discussed at length the subject of vessels that have left the Alaska fisheries, reflagged as Russian vessels and some that are currently owned by Russian companies, but are potentially eligible for licenses.

The Council and numerous industry representatives have expressed concern about the potential impact of these vessels on overcapitalization if they decide to return sometime in the future; and/or if the general licenses and endorsements are transferred. The discussion primarily related to Bering Sea/Aleutian Islands crab vessels.

Due to the need for additional information and legal counsel on the matter, the Council agreed to review language that would clarify its intent to curtail this aspect of overcapitalization in North Pacific fisheries at the September Council meeting.

Since the June Council meeting the ACC has delved into this matter at length as there are an estimated 25 fishing vessels that have left the U.S. Bering Sea crab fisheries, and reflagged to operate in Russian waters. At least 17 of these vessels range in size between 160 and 180 feet and are therefore some of the largest class of vessels that have operated in Alaskan waters. There is evidence that these vessels have had a negative impact on lost pots in the fisheries due to the cumulative impact of these large vessels. The crab catcher processors that have been reflagged to operate in Russia were the largest that

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operated in the Bering Sea crab fleet. It is estimated that the 25 vessels represent 7 to 10 per cent of the crab harvesting capacity in Bering Sea crab fisheries.

Of the total number of former U.S. flagged crab vessels operating in Russian waters, an estimated 9 or 10 crab catcher processors are owned outright now by Russian companies and therefore do not meet Chapter 121, Title 46, U.S.C. requirements adopted by the Council at the June 16th meeting.

To prevent at least some measure of these Russian flagged vessels from reentering the crab fisheries and thus adding to overcapitalization, the ACC recommends that the NPFMC stay with the decision to issue licenses to current owners as of June 17, 1995. This will exclude vessels that are currently under Russian ownership. If that date is moved forward to date of implementation of the program, this will allow for U.S. hulls that are currently under Russian ownership to change their ownership status and qualify for licenses at the time of implementation of the program.

The Russian owned vessels are clearly not economically dependent on U.S. Bering Sea crab fisheries and therefore should not be eligible for licenses and endorsements.

The domestic crab industry supports this action because it will lead to a significant reduction in harvesting effort and lead to improved conservation and sustainability of the fisheries.

cc: Lisa Lindeman, NOAA GC, Alaska Region



September 19, 1995

Mr. Richard B. Lauber
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Dear Mr. Lauber:

We are writing to provide comments for the September 27-October 2, 1995 meeting of the Council on agenda item C-3(b), "License System: Review status of proposed regulations". U.S. Marine owns and operates several vessels in the Alaskan groundfish fisheries and will be severely adversely affected by the Council's June 1995 decision on a license limitation program. U.S. Marine owned and intended to replace a moratorium-qualified trawler that was lost at sea. The June 1995 decision on replacement of lost vessels eliminated our right to replace the vessel. The decision was without notice and unfair and discriminated against U. S. Marine, a company with a strong history in the fishery.

I. Factual Background.

The OCEAN HOPE 2 was a 100' catcher vessel that began operations in the Gulf of Alaska in 1984 and to Bering Sea in 1985. It made landings in the Gulf of Alaska in 1984 and in the Bering Sea in 1985. It made landings in the Gulf of Alaska in 1988 and in the Bering Sea in 1989. It was lost at sea on March 3, 1989, and was reported to the Coast Guard on USCG form 2692. The company made plans to replace the lost vessel with the ONE OCEAN 2, a 100' trawler being made by Master Marine in Alabama. The vessel is a sister ship of the ONE OCEAN, a vessel currently operated in Alaska by U.S. Marine. However, action on a control date and a moratorium were pending at the Council and the company decided to wait until final action had been taken before completing the outfitting of the vessel as a trawler. Recently, the company decided to allow the vessel to undertake an experimental crab fishery in the Gulf of Mexico while awaiting Council and Commerce Department action on the moratorium and license limitation. The company was prepared to go forward with completion of the vessel when the Council unexpectedly cut off replacement rights for moratorium-qualified vessels that had not made a landing prior to June 17, 1995.

II. Council Actions.

The Council has considered a moratorium and other forms of entry limitation for several years. U.S. Marine has followed the Council's actions to ensure that its ability to replace the OCEAN HOPE 2 was not lost.

A. Control Date. In September 1990, the Council published a control date of September 15, 1990 stating that any vessel entering the fishery after that date might not be allowed to participate under a future limited entry program. Since the Federal Register notice made no comment about replacement vessels for those lost at sea, U.S. Marine prudently decided to wait for further Council action. The notice stated that the Council intended to prevent speculative entry by fishermen who were not, and never had been, in the fishery. The company believed that provision would be made at some point for replacement vessels for those that had participated and been lost.

B. 1994 Moratorium. The Council made decisions on a moratorium in June 1992, August 1992, and January 1993. The Commerce Department published in the Federal Register proposed regulations on June 3, 1994. The proposed regulations included all vessels entering the fishery after January 1, 1980 up to February 9, 1992. The regulations allowed replacement of vessels lost after January 1, 1989, such as the OCEAN HOPE 2, so long as the vessel made a qualified landing within two years of the effective date of the regulations. The proposed regulations continued the company's right to replace the OCEAN HOPE 2.

In August, 1994, the Commerce Department disapproved the moratorium, citing concerns with the early qualifying date of January 1, 1980 and with the liberal crossover provisions between the crab and groundfish fisheries. The Commerce Department made no comment on the replacement provisions for lost vessels.

In its September and December 1994 meetings, the Council revised the moratorium proposal to shorten the qualifying period by beginning at January 1, 1988, and by limiting crossover eligibility. The Council did not change the replacement vessel requirements, thus allowing U.S. Marine to replace the OCEAN HOPE 2.

At the April 1995 meeting of the Council, the Council noted that it had sent the moratorium proposal forward to the Commerce Department for final action. Again, the Council continued to endorse the replacement vessel requirements that allowed the OCEAN HOPE 2 to be replaced at any time until two years following the moratorium effective date.

Mr. Richard B. Lauber
September 19, 1995
Page 3

The Commerce Department approved the moratorium and published final regulations on August 10, 1995, including the same requirements for replacement of lost vessels.

C. License Limitation. The Council took action this year on a license limitation program for the groundfish fisheries at its April and June meetings.

At the April 1995 meeting, the Council approved preferred alternatives for the program. The only alternative for a general license was January 1, 1988 through June 27, 1992 while two new alternatives were presented for an area qualification. The area qualification periods were January 1, 1988-December 31, 1994 and January 1, 1992-December 31, 1994.

The "Other Provisions" section included a statement that vessels which qualified for the license limitation program, but were lost, are still eligible. The statement did not distinguish between the general qualifying period and the area qualifying period.

The Council Newsletter of May 5, 1995 stated that the analysis of these new alternatives would not be available until early June, just before the Council meeting, and invited the public to comment based on the newsletter.

At the June meeting, the Council adopted the more restrictive area qualifying period of January 1, 1992-December 31, 1994. In addition, the Council added an entirely new provision under "Other Provisions" stating that a moratorium-qualified vessel must have been replaced and made a landing no later than June 17, 1995, the date of the Council meeting. This latter limitation was added with no notice to the public.

III. Comments of U.S. Marine.

A. Moratorium Actions. From June 1992 through April 1995, the Council consistently allowed the replacement of a vessel lost after January 1, 1989 subject to only two requirements. It must have made a qualified landing after January 1, 1988 and it must be replaced and make a landing within two years of the effective date of the moratorium. Those requirements allow the OCEAN HOPE 2 to be replaced.

The company relied on the consistency of Council actions for almost three years, simply waiting for final Council action. The approved regulations will allow the vessel to be

replaced now, but limit its operating life to whatever period of time is required to approve the license limitation program or some alternative program. The moratorium provision is meaningless and undercuts our ability to make a rational business decision. No fishing company will expend the funds to complete a vessel to enter a fishery for a short period of years.

B. License Limitation Actions.

1. Notice. The Council consistently supported provisions that would allow us to replace our lost vessel, until the very last meeting in June 1995. Then, it approved a cut-off date of June 17, 1995 of our replacement right, with no notice. To the best of our knowledge, that provision was drafted and approved only at the June 1995 meeting itself. The May 5, 1995 Council Newsletter was the vehicle for obtaining public comment and it had only a vague sentence on replacement of lost vessels and no indication that moratorium-qualified lost vessels might be excluded. We received no notice of this possible action and relied on three years of consistent support by the Council.

2. Fairness. At the June 1995 meeting, the Council apparently also decided that a vessel that was qualified under the proposed license limitation scheme may be replaced at any time in the future with no limitation. Therefore, a vessel lost as early as January 1992 could be replaced at any time in the future.

We see no justification for cutting off moratorium-qualified vessels but allowing unlimited replacement for license-qualified vessels. What is the basis for discriminating between those vessels?

3. Justification and Analysis. From June 1992 through April of 1995, the Council's analysis supported allowing replacement of any vessel lost after January 1, 1989. The Council limited the provision by requiring that the vessel had to be replaced and a landing made within two years after approval of the moratorium. That ensured that the replacement option was not open-ended. The same analysis convinced the Department of Commerce to approve the replacement provision in August 1995.

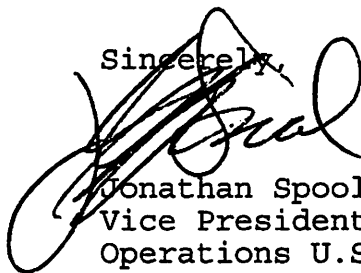
Suddenly, in June 1995, the Council apparently decided that an earlier cut-off of replacement vessels was required. We have seen no analysis to support that change. We cannot understand what analysis could have supported that change when the Commerce Department approved the original approach two months later.

Mr. Richard B. Lauber
September 19, 1995
Page 5

U.S. Marine is a responsible and active company in the fishery. We are not speculators attempting to take advantage of a government regulation. The company has been in the groundfish business in Alaska since the early 1980's and continues to operate a small fleet of vessels in a responsible manner. The company followed the developments at the Council to assist in business planning. We believed that the Council had and would continue to support regulations that would allow us to replace our lost vessel. We simply wanted to wait for final action before expending additional funds. But we cannot make decisions and provide input to the Council when events occur without advance warning. If we had known of a shift of views in the Council, we would have made our views known and argued for our approach. We had no real opportunity to do so.

We urge the Council to change these provisions and to allow any vessel lost after January 1, 1989 to qualify for a license based on its moratorium qualification. The license limitation program allows thousands of vessels to qualify. We believe that our situation is very limited and unusual and that a change could be made with little impact on the objectives of the program.

Sincerely,

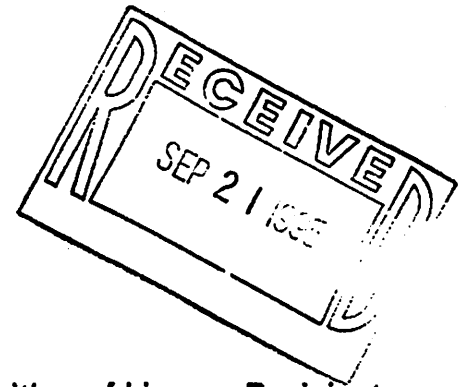


Jonathan Spool
Vice President for Alaska
Operations U.S. Marine

THE COALITION FOR STABILITY IN MARINE FINANCING

September 20, 1995

Mr. Richard B. Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK 99501



RE: C-3 Comprehensive Rationalization Planning -- Definition of License Recipients under the Crab and Groundfish License Limitation Plans

Dear Mr. Lauber:

We are writing with respect to the definition of "License Recipients" in both the Crab and Groundfish License Limitation Plans as adopted by the Council at the June meeting. A difference in this definition between the "Draft Final Action" circulated at the Council meeting on June 18, 1995 ("Final Action Version") and the version that appeared in the Council Newsletter dated June 28, 1995 ("Newsletter Version") has raised concerns among our members. Based on our review of the transcript of the Council meeting, it appears as though the Final Action Version -- not the subsequent Newsletter Version -- reflects the actual action of the Council on this subject. The Coalition's concerns are with the impact of the Newsletter Version on marine financing.

1. The Discrepancies in the Definitions

The principal difference between the two definitions is whether the "current owner" to whom the license is initially awarded is the current owner of the vessel at the time the license is issued (the Final Action Version), or the current owner of the vessel on June 17, 1995 (the Newsletter Version).

In the Final Action Version the definition of the term "License Recipient" for both the Crab and Groundfish fisheries is as follows:

Licenses will be issued to current owners of vessels.
Current owners are defined as those "persons" eligible to document a fishing vessel under Chapter 121, Title 46, USC.

The Newsletter Version changes this definition with the addition of the following underscored language:

Licenses will be issued to current owners (as of 6/17/95) of qualified vessels. (Owners must be "persons eligible to document a fishing vessel" under Chapter 121, Title 46, U.S.C. This date may be subject to modification under certain circumstances involving qualified vessels now operating under foreign flags.)

2. The Transcript of the June 17th Session of the Council Supports the Final Action Version, not the Newsletter Version

On Saturday, June 17, 1995 the Council discussed the issue of whether to specify the date of current ownership. Captain Anderson raised his concern with the previous day's discussion of whether there should be a date in the definition. Believing there had been no final resolution, he offered an amendment to clarify the issue by excluding any date. After discussion, his motion was adopted without objection. The Council's action is clear from the transcription of this portion of the Council meeting, a copy of which is attached hereto as Exhibit A.

Among his concerns, Captain Anderson explained that the addition of a date certain would create problems by tying the license to whoever happens to be the owner in June 1995 whereas the program might not be approved and in place for several years during which time there could be various transactions affecting the vessel's ownership. He also expressed concern that to adopt the date for the first time at the meeting without allowing proper notice to those who could be significantly affected would violate the Administrative Procedures Act. In order to avoid these problems Captain Anderson suggested leaving out the date. The transcript reflects the Council's agreement with Captain Anderson.

3. Retention of the Date Certain in the Newsletter Version Has Adverse Consequences for Marine Lending

Apart from the obvious uncertainty that the Newsletter Version creates for vessel loans involving vessels that have been reflagged, the consequences for the lending community are potentially significant. Because the license limitation plans are not likely to become effective for some time -- potentially several years -- it is possible that any change in vessel ownership during the intervening period could result in a separation of the vessel from the license with adverse consequences for the lender.

Perhaps the clearest example is where a lender forecloses on a delinquent mortgage. Assume, by way of illustration, that such a foreclosure takes place in 1996, but that the plan is not fully implemented until January 1998. No license can be issued until 1998 at which time it must be issued to the owner back on June 17, 1995. At that point the 1995 owner may well be hard to locate, and in any event is not likely to be cooperative with whoever purchased the vessel at auction in 1996.

This of course assumes that someone is willing to buy the vessel at auction without some kind of assurance that the vessel will be able to qualify for a "future license" when and if the current license limitation plan, or some variation thereof, is approved by the Secretary of Commerce.


In order to protect its rights the lender may be forced into conducting a subsequent judgment execution sale to attempt to capture the potential license interest. This of course assumes that a court will allow the sale of such an unusual "future" license interest -- an interest, that at the time of sale, does not exist and may in fact never exist.

Nor is a foreclosure scenario the only situation in which problems could occur. Any manner of routine transfers of ownership resulting from divorces, deaths, changes in owning partnerships, business restructurings, sales and the like could result in a different "current owner" at the time the license is issued as compared to the "current owner" on June 17, 1995. Because many of these changes are impossible to predict, and in many cases difficult or impossible to control (as in the case of the owner's death or divorce), lenders will have to factor into all financing arrangements for crab and groundfish vessels the possibility that down the road the collateral value of the fishing vessel asset will be substantially diminished should it become involuntarily and uncontrollably separated from its license to fish. This uncertainty will have a chilling affect on the availability of financing.

The above problems can be avoided completely by simply issuing the license to the current owner of the vessel at the time that the license actually comes into existence as was contemplated in the Final Draft Version of the License Recipient definition. We urge the Council to correct the Newsletter Version of this definition to conform to the Council's action on Captain Anderson's motion as reflected in the Final Draft Version and in the meeting transcript.

Thank you for your consideration of these comments.

Sincerely,


William N. Myhre
PRESTON GATES ELLIS
& ROUVELAS MEEDS
1735 New York Ave., N.W.
Washington, D.C. 20006
(202) 628-1700


Joan Travostino
PRESTON GATES & ELLIS
420 L Street, Suite 400
Anchorage, AK 99501-1937
(907) 276-1969

Counsel for
THE COALITION FOR STABILITY IN MARINE FINANCING

Attachment

**MEETING OF THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
Saturday, June 17, 1995 [Tape # 58; 9:48 AM -- 10:18 AM]**

* * *

Chairman Lauber:

Moving down to license recipients ... yes, Captain Anderson.

Captain Anderson:

Yes, Mr. Chairman, we discussed this yesterday under groundfish, but the same language that causes a problem is now listed under the most recent documents under both crab and groundfish. It discusses current owners of vessels documented in the United States as of 6/15/95.

I know we didn't reach resolution on that issue yesterday; there were a lot of different ideas floating around. I think that what the staff was trying to capture was what they heard yesterday, but I don't think it was the best resolution and I have a motion I'd like to change that initial language. My motion would be to redefine that first sentence both under groundfish and crab to be: "license recipients would be current owners defined as those 'persons' eligible to document a fishery vessel under Chapter 121, Title 46, USC." If I can get a second I'll speak to it.

Unidentified voice:

Second.

Chairman Lauber:

That's as of June 16, 19 ...

Captain Anderson:

No sir, no. I did not add the particular date in there. I'll address that also. What we could have in this case -- I suppose there's about 40 vessels that may have been reflagged Russian; they may or may not still be U.S. corporations that own those vessels, I don't know that. But the language that's in the existing document would in fact prohibit perhaps a fully qualified U.S. corporation, which happens to be flying a Russian flag on its vessel, from the opportunity to reflag that vessel U.S. It is probably no different than any other vessel that may have a landings history that has just participated in a different area of the country in a U.S. fishery. The documentation laws allow these vessels to return to U.S. documentation and re-acquire their fishery endorsement. The language I proposed would keep that consistency between the documentation laws and the Magnuson Act.

By putting a date certain in there, I think you may run into -- I'll defer maybe to NOAA general counsel -- but you may run into some other problems with the Administrative Procedures Act of allowing proper notice of that opportunity to reflag U.S. You may be better off looking at those vessels and defining current owners without a date for now. Because if we put a date certain in there, the other problem you run into is U.S. vessels currently -- you're going to tie this license to whoever happens to be the owner as of today when you've got a program that may not be in effect for three years from now so I don't know what that would -- how that would - compound problems with future transactions and owners. So I think I would leave the date out for now. With that I'll allow any other discussion.

Chairman Lauber:

Okay. Moved and seconded. It basically was the same language that I read yesterday, correct?

Captain Anderson:

Yes, Mr. Chairman.

Chairman Lauber:

"Persons" defined as those eligible to document a fishing vessel under Chapter 121, Title 46; but without the date.

Is there any further discussion? Is there any objection to the motion of Captain Anderson that I just read?

Appearing none, it passes.



ALASKA OCEAN SEAFOOD

LIMITED PARTNERSHIP



September 14, 1995

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Re: Agenda Item C-3(c) - BSAI Pollock IFQ's

Dear Mr. Lauber:

I am writing on behalf of Alaska Ocean Seafood Limited Partnership, which owns the surimi factory trawler ALASKA OCEAN.

My partners and I have long advocated establishment of an IFQ system for the Alaska groundfish fisheries, and we are pleased that the Council has now initiated the process for establishing such a system with respect to pollock. While the proposal that the Council has before it for analysis raises many important issues, our remarks here are confined to the single issue that we view as most important - initial allocations.

As the Council undoubtedly recognizes, one of the most difficult factors in designing an IFQ program is devising initial allocation parameters that will survive legal scrutiny and political pressure. The problems arising from allocation formulations result from the tendency of those formulations to create winners and losers - for some recipients to receive "windfalls" at the expense of other participants. We believe that winner-and-loser issues can be greatly minimized in the pollock fishery by a simple concept, discussed below.

I. OUR PROPOSAL.

We urge the Council to include in its analysis, and indeed to identify as its preferred alternative, the following concept:

NO HARVESTING VESSEL SHALL RECEIVED LESS THAN NINETY-FIVE PERCENT (95%) OF ITS PERCENTAGE OF THE HARVEST DURING THE PERIOD JANUARY 1, 1991 THROUGH JUNE 24, 1992.

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NO PROCESSING SECTOR SHALL RECEIVE LESS THAN NINETY-FIVE PERCENT (95%) OF ITS PERCENTAGE OF POLLOCK RECEIVED DURING THE PERIOD JANUARY 1, 1991 THROUGH JUNE 24, 1992.

The reasoning underlying this concept is quite simple. 1991 is the first year in which pollock was 100% harvested and processed by domestic operation. It is therefore the first year in which the Magnuson Act's authority to allocation resources among U.S. fishermen comes into play, and it should serve as the base year for beginning allocation calculation. June 24, 1992 is, of course, the date announced by the Council beyond which harvests would likely not be counted in any future allocation schemes. therefore, harvests beyond that date should be irrelevant to allocation calculations.

The appeal of this concept is also quite straightforward - it leaves those who were harvesting and processing the resource at the time the Council "froze" the industry exactly where they were. There simply are no winners and losers. Thus there are no windfalls. Nor is there any threat to the economic well-being of crew members and others who would be losers under some of the other formulations contained in the proposal. In other words, the parameters are fair.

The legal and equitable soundness of this proposal can readily be seen by comparing it with some of the other alternatives that the Council now has before it for analysis.

II. ALLOCATION FORMULAS BASED ON EARLY CATCH HISTORY CANNOT WITHSTAND LEGAL SCRUTINY.

The proposal before the Council contains a number of options that would base the initial quota share allocation on early catch history. For ease of understanding, these comments address only Option A, though they are equally applicable to the other "early history" options.

Option A would calculate initial allocations based on catch history beginning in 1984. At the outset, we know of no particular legal or historical significance to that year, and are puzzled as to why that particular year was chosen. More importantly, the results of Option A would be untenable, as can be seen by examining its likely effects on three groups of industry participants: early entrants who continue to own and fish with the same vessels; current owners of early entrant vessels; and later entrants such as ALASKA OCEAN.

During the period we are proposing for the allocation base, all three of these groups had an equal opportunity to use their energies, skills, and capital to develop a catch history. Likewise, during that period, all three groups had an equal opportunity to demonstrate presence in and dependence on the fishery. Yet, Option A would have startlingly different consequences for each group.

A. Early Entrants.

These participants entered an industry devoid of the characteristics that now give rise to the need for an IFQ program. The industry was undercapitalized and non-competitive. Many of these entrants were "joint venture" harvesters who came to the pollock fishery to avoid bankruptcy in the crab industry and who enjoyed the full encouragement and support of our federal, state, and local governments to eliminate foreign fishing in U.S. waters. Others were factory trawlers who accumulated tremendous catch histories by enjoying year-round access to all areas of the BSAI, and in some instances, by engaging in the low-yield, high-value practice of roe stripping. And regardless of how their early catch histories were achieved, they have had more years of good, non-competitive fishing, which has enabled them to recoup their capital investments. As a result, during our proposed allocation period, despite greatly heightened competition, they were nonetheless able to maintain viable operations and their personnel remained gainfully employed.

Were Option A to be adopted, these participants would enjoy an incredible windfall. Their catch histories from early years, histories which have no bearing on the composition of the industry when it was frozen by the Moratorium cut-off date, would be used to provide them with allocations far in excess of the catches upon which they and their employees are dependent. Moreover, these excessive allocations in all likelihood would encourage these participants to develop additional capacity to realize the benefits of the larger allocations.

Such results simply cannot withstand scrutiny under the National Standards of the Magnuson Act. For example, the results would violate the fair and equitable criterion of National Standard 4 by giving this group an unwarranted windfall. Similarly, Option A would run afoul of National Standard 4's prohibition against acquisition of excessive shares by providing this group with allocations greatly in excess of their current catches.

Option A would encounter similar problems if measured against National Standard 5. Contrary to the Standard's ban on economic allocation as the sole purpose of a conservation and management measure, Option A would provide economic benefits to this group which this group does not need; thus the Option would provide an economic allocation to a particular segment of the industry and would do so without any offsetting benefit. Further, and again contrary to National Standard 5, Option A would create incentives for excessive investment in additional capacity. For this same reason, Option A is inconsistent with National Standard 7 as well.

B. Recent Purchasers of Early Entrant Vessels.

Were Option A to be adopted, its effects on this group, and concomitant unacceptability, would be virtually identical to the early entrant group. The unacceptable results would be exacerbated, however, by the fact that these participants did not even achieve the catch histories upon which their allocations would be based. (In fact, some early entrant vessel owners who achieved the catch history sold these vessels to invest in later entry vessels.)

C. Later Entrants.

These participants brought to the industry capital investments which have not yet been recouped. They created additional job opportunities in the fishery itself as well as in support industries. As with the other groups, the 1991-1992 dates reflect this group's participation in and dependence on the fishery.

Were Option A to be adopted, this group would receive allocations considerably smaller than their present catch. Catch would be reallocated to the early-entry and recent-purchaser groups who are not dependent on that catch. As a result, this group would face under-utilized capacity and a severe reduction in employment opportunities. Many would find that their operations are no longer economically viable.

Again, such results are contrary to the National Standards. With respect to National Standard 4, fairness and equity would be lost. Early entrants would receive a windfall allocation at the expense of this group. Employees of this group would be discriminated against in favor of employees of early entrants who are already gainfully employed. Employees in industries such as shipyards that service later entrants would suffer job losses with no concomitant benefit to anyone.

Similarly, National Standard 5 would be violated because Option A would result in an unwarranted economic allocation: Option A would ignore the capital investments undertaken by later entrants and the ability of quota share systems to affect the worth of assets, while providing bonus shares to earlier entrants whose capital investments already have been recouped.

III. ALLOCATION SHARES BASED ON POST-CUT-OFF-DATE CATCHES SHOULD NOT BE CONSIDERED.

Several Options contained in the current proposal would base or measure allocations against catches achieved in 1993 or 1994. the Council should not consider those Options.¹

The public has been on notice for several years that the Council looks unfavorably at catch histories accumulated after June 24, 1992. There is no reason for the Council to deviate from that position, and to do so would only serve to reward the capital stuffing that has occurred in the industry since the cut-off date.²

Moreover, consideration of these Options will signal the industry that the Council may well tolerate and reward further capital stuffing that occurs during the Council's implementation process, and impression bolstered by many of the Council's recent decisions with respect to the License Limitation Program.

Inevitably, there must be some cut-off date beyond which catch history will not be considered. Logically and equitably, that date is June 24, 1992.

¹We recognize that inclusion of these Options is motivated, at least in part, by a desire to address the Magnuson Act's requirement to consider "present participation." However, nothing in the Act or its history requires that "present" be defined as strictly synonymous with "current." The Council and NMFS have already recognized this fact by approving the halibut-sablefish ITQ program, where allocations were based on catch histories ending in 1990 for a program that was not implemented until 1994.

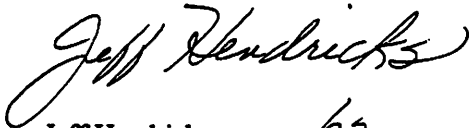
² The only existing constraint on fleet expansion is the Moratorium, which forbids new vessel entries and limits increases in the size of existing vessels. There are no existing limitations on increasing vessel horsepower or processing capacity. As a result, the delays in implementing an IFQ system have served to exacerbate the race for fish: shore side and at sea processors alike have made and continue to make substantial investments - capital stuffing - to increase processing capacity, all in a race to accumulate catch history.

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IV. CONCLUSION.

The Council's decision to begin the process of implementing a pollock IFQ is a significant step. Its importance will be greatly enhanced if the Council immediately focuses its attention and analysis toward adoption of our initial allocation proposal.

Sincerely,



Jeff Hendricks
General Manager



BSAI POLLOCK ITQ PROGRAM

This ITQ program would only cover the directed fishery for Alaskan pollock in the Bering Sea and Aleutian Islands.

INITIAL QS CALCULATION

QS/ITQs allocated and designated according to categories for harvesting and processing; and inshore and offshore. QS/ITQs further divided into roe/non-roer portions within these categories, based on the annual roe/non-roer season split. Initial harvester QSs only awarded to vessels that (1) qualify to fish in the BSAI areas under the vessel moratorium, or if the License Limitation program is implemented, qualify for BSAI license and appropriate area endorsements; and (2) have made landing(s) during certain years as specified under this ITQ program. Initial processor QSs only awarded to processors that have processed pollock during certain years as specified under this program.

SPECIES FOR INCLUSION

Alaska pollock only with prohibited species issued as PSC QSs (prohibited species quotas) based on the historical apportionment of the PSC cap for pollock for each prohibited species, as appropriate.

AREAS

QS/ITQs will be awarded for the Bering Sea and Aleutian Island areas only.

CRITERIA FOR INITIAL QS QUALIFICATION

Initial allocation of QS will be to current owners of vessels and processing facilities which meet certain allocation criteria; and in the case of vessels, are moratorium qualified or licensed under the Vessel Limitation program if that program is established.

OPTION A: No recent participation requirement.

OPTION B: Vessel must have landed pollock or processor must have processed pollock anytime in the three-year period prior to June 24, 1992, or December 31, 1994 (both options analyzed). If vessel or processing facility is lost during this period, owner at time of loss is still eligible to receive initial QS.

COMMUNITY DEVELOPMENT QUOTA (CDQ)

CDQ set-asides of 7.5% of the BSAI pollock TAC, but only for BSAI communities meeting current CDQ eligibility requirements, patterned after current pollock CDQ program, with no sunset provisions.

INITIAL QS CALCULATION (Two-Pie System)

Initial QS awarded to each qualifying recipient (harvester and/or processor) based on their participation in each of two QS categories (inshore category and offshore category, reflecting the current inshore-offshore quota split, if any). QS within each category further subdivided into roe and non-roer segments corresponding to the current percentage split between roe and non-roer pollock seasons (i.e., 45/55), or as annually established by the Council.

I. HARVESTER QS

OPTION A: QS based on reported pollock catch of vessel from 1984, or earliest year for which there are verifiable catch statistics, to June 27, 1992, or December 31, 1994 (both options analyzed). JVP history allocated either: (1) all to offshore category; (2) on a prorata basis according to allocation of vessel's DAP catches between categories; or (3) at option of vessel owner.

Suboption A: Weight DAP 3:5:1 JVP

Suboption B: Weight DAP 2:0:1 JVP

Suboption C: No weighting by DAP or JVP sector

OPTION B: Same as Option A, all Suboptions, except QS based on the weighted formula below with "X" and "Y" being weighting factors for Historic Participation and Present Participation, respectively, with the sum of $X + Y = 1.0$. The analysis would cover X and Y weighting factors ranging from $X=0.4, Y=0.6$ to $X=0.8, Y=0.2$

$$X([DAP+JVP]/1984-90) + Y(DAP/1991-94)$$

OPTION C: QS based on individual harvester's best year from 1991 to 1994.

OPTION D: QS based on individual harvester's average catch from 1991 to 1994.

II. PROCESSOR QS

Processor QS would either be symmetric (equal to 100% of total harvester QS) or asymmetric. The analysis of the asymmetric option would include processor QS equal to 101%, or 105% of total harvester QS. Processor QS for each factory trawler receiving harvester QS would be not less than their individual harvester QS.

OPTION A: QS based on reported receipt of pollock by processor from date of entry into the pollock fishery until June 27, 1992, or until December 31, 1994 (both options analyzed).

OPTION B: QS based on the following weighted formula with "X" and "Y" being weighting factors for Historic Participation and Present Participation, respectively, with the sum of $W + Y = 1.0$. The analysis would cover the same range of X and Y weighting factors as with the Harvester QS option.

$$X(DAP/1984-90) + Y(DAP/1991-94)$$

OPTION C: QS based on individual processor's best year from 1991 to 1994.

OPTION D: QS based on individual processor's average receipt of pollock from 1991 to 1994.

III. LIMITS ON INITIAL RECEIPT OF QS

OPTION A: No provisions relating to limits on initial receipt of QS.

OPTION B: Limits on initial receipt of QS--no harvester and/or processor would receive less than X% of their catch or receipt of pollock in 1994 with X ranging from 75% to 95% for analysis purposes.

PROHIBITED SPECIES CATCH (PSC) QS PROVISIONS

I. INITIAL ALLOCATION

OPTION A: PSC QS based prorata on initial Harvester QS.

OPTION B: PSC QS based on the application of industry average bycatch rates.

II. RELATION OF PSC QS TO POLLOCK QS

OPTION A: PSC QS/ITQ and pollock QS/ITQ bundled

OPTION B: PSC QS/ITQ and pollock QS/ITQ unbundled

Suboption A: PSC QS/ITQ transferable

Suboption B: PSC QS/ITQ non-transferable

TRANSFERABILITY PROVISIONS

I. No Restrictions.

II. Restrictions

Any or all of the following options may apply:

OPTION A: Two-year restriction on sales only (could lease).

OPTION B: Restriction on QS/ITQ transfers between inshore and offshore sectors. Range (of duration) for analysis to include 5 years, 10 years, and no transfers.

OPTION C: Restriction on QS/ITQ transfers between catcher-processor and catcher sectors. Range (of duration) for analysis to include 5 years, 10 years, and no transfers.

USE/OWNERSHIP PROVISIONS

The following options considered relative to accounting under the ITQ program. These options will affect an operator's ability to match ITQs to catch, and also relate to the ability to effectively manage the program with the overall TACs.

I. ITQ USE PROVISIONS

OPTION A: Must control ITQs to cover expected catch before fishing or processing.

OPTION B: Retrospective Balancing --- Overage/Underage program as with sablefish and halibut program, or some variant whereby quota may be acquired retrospectively to cover current catch.

OPTION C: "Use it or lose it" provision.

II. OWNERSHIP CAPS

OPTION D: No ownership caps.

OPTION E: Ownership caps of 1%, 5%, 10% or any percentage with that range with caps coming into effect subsequent to initial allocation of QS.

HARVESTING PROVISIONS

I. Pollock

OPTION A: No Restrictions on harvest method.

OPTION B: Restrictions on harvest method.

Suboption A: On-bottom trawling permitted to harvest pollock in directed pollock fishery only if catching vessel has sufficient halibut/crab PSC QS to cover its bycatch of these prohibited species. Otherwise, vessel must fish with pelagic trawl.

Suboption B: Only a pelagic trawl permitted for harvesting pollock in a directed pollock fishery.

II. Non-pollock Species

OPTION C: No restrictions on directed fishing for non-pollock species by holders of pollock ITQ.

OPTION D: Directed fishing for non-pollock species only permitted for those species for which vessel holding pollock ITQ had previously harvested in directed fishery for a particular species prior to June 24, 1992, January 1, 1994, or June ____, 1995 (all options analyzed), with or without restrictions on total allowed catch and/or seasons.

OPTION E: PSC QS (IBQ) program for directed fisheries for all non-pollock species.

ENFORCEMENT AND MONITORING PROVISIONS

An enforcement and monitoring plan, including not less than 100% observer coverage of all harvesting vessels and processing facilities, must be developed by NMFS and approved by the Council as part of the ITQ system. Such a plan should build on the experience gained in the CDQ program. It should clearly describe mechanisms for measuring and monitoring quota harvest and bycatch on an individual vessel and processing facility basis. Constraints imposed by current confidentiality requirements should be addressed. The plan should also clearly describe provisions for designating ports of landing and specific mechanisms to prevent leakage, including possibly transponders, plus measures to monitor at-sea transshipments and provisions to measure and record harvests on an individual vessel basis prior to transporting product into waters outside the jurisdiction of the U.S. The plan should include a review of enforcement and monitoring experience in the U.S. ITQ programs, including halibut/sablefish IFQ program and pollock CDQ program. A review of the accuracy of previous enforcement cost estimates should be included.

GENERAL PROVISIONS

1. Allocations represent a use privilege. The Council could alter or rescind the program without compensation. The Council needs a written legal opinion from NOAA General Counsel to clarify Council authority and liability for any future constitutional "takings" claims if ITQ program is substantially altered or rescinded.
2. Council should pursue some level of administrative fee extraction to fund program, possibly through a Magnuson Act amendment, if necessary. To establish an appropriate level of funding, an analysis of the impact of various fee collection levels and mechanisms is required. This analysis should include consideration of state and federal taxes and fees imposed on industry as well as management, enforcement and other fisher-related costs borne by state and federal governments in support of industry.
3. The U.S. citizenship/controlling interest definitions used in the halibut/sablefish IFQ program should be analyzed for all harvesting and processing operations as to their applicability to this ITQ program. This analysis should examine the implications of foreign ownership including an analysis of Pacific Council's foreign ownership provisions. This analysis should also address ownership or control of QS/ITQ by lien holders and/or lending institutions..
4. An analysis of constraints on management and implementation of this pollock ITQ system posed by present confidentiality requirements is required. As part of this analysis, the extent to which current confidentiality requirements impede Council compliance with MFCMA requirements for review of allocation scenarios is required.
5. An analysis should be made of possibly requiring Full Retention of all pollock harvested within the range of 1 to 5 years after the implementation of the ITQ program.

Proposed Outline of EA/RIR of BSAI Pollock IFQs

1. Introduction
 - a. Problem Statement
 - b. Alternatives
 - i. Status quo
 - ii. IFQs for pollock
 - c. Overview of Document
2. Pollock and the BSAI Ecosystem
 - a. Pollock Biology
 - b. Interactions with other commercial fish
 - c. Interactions with non-commercial animals
3. The Pollock Fishery in the BSAI
 - a. Pollock Processing
 - b. Pollock Harvesting
 - c. Management
 - d. Communities
 - e. Models of the fishery
4. Status Quo: Alternative 1
 - a. Description of the Fishery into the Future
 - b. Cost and Benefits
 - c. Distributional Impacts
 - d. Summary of Continued Status Quo
5. IFQs for Pollock: Alternative 2
 - a. General Overview and Literature Review of IFQs
 - b. Management Under Pollock IFQs
 - c. Allocation of IFQs
 - d. Description of the Pollock IFQ Fishery in the Future
 - e. Cost and Benefits
 - f. Distributional Impacts
 - g. Summary of Non-pollock Fishery Impacts
 - h. Summary of IFQs for Pollock
6. Summary and Conclusions
 - a. General summary and conclusions
 - i. Comparison of alternatives
 - b. EA/RIR
 - c. IRFA
 - d. E.O. 12866
 - e. NEPA

Supplemental Analysis of IFQ Allocation Options

1. Introduction
2. Description of General Allocation Methods
3. Hierarchy of Pollock IFQ Program Allocation Options
4. Description of Reference Configurations and Variants
5. Distribution of IFQs under Reference Configurations

Detailed Preliminary Outline of Chapter 5 of EA/RIR Alternative 2: IFQs for BSAI Pollock

5. Alternative 2: IFQs for BSAI Pollock

a. General Overview and Literature Review of IFQ Systems

- i. Harvesting IFQs; A "one pie" system
 - (1) Theory and Global Experience
 - (a) Multi-species IFQs Multiple Species Fisheries.
 - (b) Single Species IFQs in Single Species Fisheries.
 - (c) Single Species IFQs in Multiple Species Fisheries.
 - (2) Processors in a Harvesting IFQ system.
 - (3) Inshore-Offshore in a one-pie system.
- ii. The Two-Pie System; Harvesting IFQs and Processing IFQs
 - (1) Theory
 - (2) Inshore-Offshore in a two-pie System
 - (3) Comparison to "One-Pie" System

b. Management Under Pollock IFQs

- i. ✓IFQ System Definition
 - (1) Two-Pie IFQ for Directed Mid-water Pollock
 - (2) Two-Pie IFQ for Directed Pollock (Midwater and Bottom)
- ii. ✓Definition of Quota Types. Including one or more "type" creates a separate quota and therefore a separate apportionment of the TAC. Additionally, "quota types" may imply a barrier to transferability.
 - (1) Inshore - Offshore
 - (2) A Season - B Season
 - (3) Midwater-Bottom
 - (4) Catcher Vessel-Catcher Processor
 - (5) Catcher Processor-Mothership-Shore plant
- iii. ✓Pre-Season Apportionments of Pollock TAC
 - (1) ✓CDQ apportionment. An updated assessment of the CDQ program would be included as an attachment to the analysis.
 - (2) ✓Apportionment of Pollock for Bycatch in Non-Pollock Fisheries.
 - (3) Apportionment of Pollock for Directed IFQ Fishery
 - (a) ✓A Season and B Season.
 - (b) ✓Inshore and Offshore.
 - (c) ✓Midwater and Bottom Pollock.
- iv. Prohibited Species Bycatch Management Regime
 - (1) ✓Relationship to Non-Pollock Fisheries
 - (a) Separate PSC Regime for Pollock IFQ and Non-Pollock Fisheries.
 - (b) One PSC Regime for All BSAI Fisheries.

✓Denotes a "Decision Point". Some decision points have options which are themselves decision points.

- (2) **Included Species in Pollock IFQ PSC Regime**
 - (a) **Midwater Pollock**
 - (i) Chinook Salmon
 - (ii) Chum Salmon
 - (iii) Herring
 - (iv) Halibut
 - (b) **Bottom Pollock**
 - (i) Halibut
 - (ii) King Crab
 - (iii) Tanner Crab
 - (3) **General Restrictions**
 - (i) **Area Closures**
 - (ii) **Catch/Mortality Caps**
 - (4) **IPSQ for Included Species**
 - (a) Relationship to General Restrictions
 - (b) **Requirements for IPSQ**
 - (i) Sufficient IPSQ before trip begins
 - (ii) Grace Period to Purchase IPSQ if catch exceeds individual quota.
 - (5) **Allocation of Prohibited Species Bycatch Quotas**
 - (a) Proportional to initial harvester QS based on industry bycatch rates, i.e., $IPSQ = \text{Industry Bycatch Rate} \times \text{Initial QS}$.
 - (b) Each vessel receives industry average bycatch amount, i.e., $IPSQ = \frac{\text{Total Pollock PSC Cap}}{\# \text{ of vessels receiving IFQs}}$.
- v. **Management of Groundfish Bycatch in the Pollock IFQ Fishery**
- (1) No restrictions on the amount of groundfish bycatch in the pollock IFQ fishery.
 - (2) **Separate apportionment of bycatch amounts of groundfish species TACs allowed to be taken in the Pollock IFQ fisheries. For example allocate X% of Pacific cod TAC to be used as bycatch in the pollock IFQ fishery.**
 - (a) Close IFQ Fishery if groundfish bycatch apportion has been harvested.
 - (b) Require discards of groundfish bycatch if apportion has been harvested.
 - (c) Allocate non-pollock groundfish bycatch in form of IGBQ by species to each harvester.
 - (i) **Allocation options of individual groundfish bycatch quotas.**
- vi. **Participation of IFQ Recipients in Directed Fisheries for Non-Pollock Species**
- (1) No Restrictions
 - (2) **Limited to vessels which had previously fished in non-pollock fisheries, i.e., a species /area endorsement to be applied only to pollock IFQ recipients.**
 - (a) based on participation prior to June 24, 1992.
 - (b) based on participation prior to June 17, 1995.
 - (3) **Apportion TACs for Directed Fishing of Non-Pollock Species to Pollock IFQ holders and to other open access participants. For example allocate Y% of Pacific Cod TAC to Pollock IFQ holders for directed fishing on Pacific cod.**
 - (4) **Restrict Seasons in which IFQ holders may fish open access.**
- vii. **General Enforcement and Administrative Provisions in IFQ Pollock Fishery**
- (1) **Observer Requirements**
 - (2) **Weight Measurement Requirements**
 - (3) **Use and Accounting Requirements of IFQs**
 - (a) IFQ holder must use IFQs on all pollock caught/processed.
 - (b) IFQ holder must use IFQs on all pollock caught/processed in a directed pollock

fishery.

- (4) ✓Retention Requirements
 - (a) Do not require full retention.
 - (b) Require full retention of all pollock harvested under IFQs upon implementation.
 - (c) ✓Require full retention of all pollock harvested under IFQs after a set number of years following implementation. Options include a range of 1 to 5 years.
- (5) ✓Other Enforcement Measures.
- (6) ✓Requirements for IFQs to Cover Catch/Processing
 - (a) Sufficient IFQ before trip or processing begins.
 - (b) Grace Period to Purchase IFQs if catch exceeds individual quota. (Allow Retroactive Balancing)
- (7) ✓Harvesting/Processing Overages or Underages
 - (a) rollover into next years IFQ is catch or processing is \pm R%.
 - (b) If overage is greater than R% then penalize.
 - (c) If underage is greater than R% then penalize. (Use it or lose it.)
- (8) ✓Transferability of Pollock QS and prohibited species IPSQs
 - (a) Pollock QS and IPSQs are not transferable.
 - (b) Pollock QS and IPSQs are transferable, but only as a "bundle".
 - (c) Pollock QS are transferable, but IPSQs are not transferable.
 - (d) Pollock QS and IPSQs are independently transferable.
- (9) ✓Transferability within quota types. (Inshore-Offshore, A Season-B Season, etc)
 - (a) No restrictions on transferability
 - (b) Two year restriction on sales of QS. Leases of QS (or sale of IFQs) would be allowed.
- (10) ✓Transfers between inshore and offshore sectors.
 - (a) No transfers allowed.
 - (b) Transfers allowed after 5 years. This implies that inshore-offshore designation is dropped after 5 years, and shares which had been designated as offshore could be used for delivery inshore.
 - (c) Transfers allowed after 5 years.
 - (d) Transfers allowed after 10 years.
- (11) ✓Transfers between other Quota Types
- (12) ✓Ownership Caps. These caps would limit purchases of additional QS, but not affect the amount which could be received in the initial allocation. *This section may be moved to the "Supplemental..." because its impacts are dependent on the allocation.*
 - (a) No ownership caps
 - (b) ✓Limit ownership to a percent of the entire QS pools for Harvesting and Processing. Options include 1%, 5%, 10% of each pool or any % within that range.
 - (c) ✓Limit ownership to a percent of each Quota Type, Inshore Quota Pool, Offshore Quota Pool, A Season Quota Pool, B Season Quota Pool, Catcher Vessel Quota Pool etc. Options include 1%, 5%, 10% of each pool or any % within that range.

viii. Assessment of Enforcement and Administrative Costs.

ix. ✓Analysis of potential fee collection measures.

x. Assessment of regulations regarding confidentiality and their impacts on management and enforcement of the pollock IFQ program.

c. Allocation of IFQs

i. General discussion of the critical nature of the initial allocation

ii. Generalized discussion of various methods of allocation.

- (1) Uniform distribution to all recipients
- (2) Physical characteristics of recipients (vessel size, processing facilities)
- (3) Participation history of recipients
 - (a) Catch/Processing History
 - (b) Number of years in fishery
 - (c) Catch/Processing in last or best year of participation.
- (4) Combination of elements from above.
- (5) Guaranteed % of last or best year, plus additional shares for longer term participation.
 - (a) Guaranteed minimum share to each, plus additional shares for longer term participation and/or higher catch/processing.
 - (b) Graduated minimum share to each based on physical characteristics, plus additional shares for longer term participation.

iii. Key Decision Points

- (1) ✓ Recipients of IFQs
 - (a) Owners of vessels or processing facilities as of the date of final council Action
 - (b) Owners of vessels or processing facilities as of the date of application for IFQs.
- (2) ✓ Primary qualification criteria
 - (a) Vessel must be moratorium qualified and permitted, and processors must have Participated in North Pacific Groundfish between 1988 and February 9, 1992.
 - (b) Vessel must be qualified to receive a license and BS and/or AI endorsements, and Processors must have participated in BSAI pollock between January 1, 1992 and June 17, 1995.
- (3) ✓ Data To Be Included In Calculation of QS
 - (a) All reported pollock
 - (b) All retained pollock
 - (c) All pollock reported in a directed pollock fishery
 - (d) All pollock retained in a directed pollock fishery
- (4) ✓ Disposition of CDQ catch between 1992 and the present.
 - (a) Do not include CDQ catches in allocation calculation.
 - (b) ✓ Include CDQ catches in allocation calculation.

iv. Description of Supplemental Analysis of IFQ Allocation Options

- (1) ✓ Hierarchy of Pollock IFQ Allocation Options

- d. Description of the pollock IFQ fishery in the future
- e. Cost and benefits
- f. Distributional impacts
- g. Summary of non-pollock fishery impacts
- h. Summary of IFQs for pollock

Preliminary Hierarchy of Pollock IFQ Allocation Options

Primary Qualification Criteria

- 10,000,000 Vessel must be moratorium qualified and permitted, and processors must have participated in North Pacific groundfish between 1/1/88 and 2/9/92.
- 20,000,000 Vessel must be qualified to receive a license and BS and/or AI endorsements, and processors must have participated in North Pacific groundfish between 1/1/92 and 6/17/95.

Recent Participation Qualification Criteria

- 0,000,000 No additional Qualification Criteria
- 1,000,000 Must have fished from 6/24/89 - 6/27/92.
- 2,000,000 Must have fished from 1/1/92 - 12/31/94.

Data To Be Included In Calculation of QS (Added by Staff)

- 100,000 All reported pollock in open access fishery
- 200,000 All retained pollock in open access fishery
- 300,000 All pollock reported in a directed pollock open access fishery
- 400,000 All pollock retained in a directed pollock open access fishery

Minimum QS: Set a minimum QS ratio (QSR) and allocate a minimum QS (MQS) which will result in IFQs which are not less than the QSR \times individual's Catch over a given time period (C_{it}). This assumes that IFQs are based on a $TAC = \sum C_{it}$.

- 00,000 No minimum. MQS=0 & QSR=0. All QS allocated in "Regular QS calculation" below.
- 10,000 QSR = 75%, " C_{it} " = 1994 catch. MQS=QSR \times C_{it} . MQS=0 for those with no 1994 participation.
- 20,000 QSR = 95%, " C_{it} " = 1994 catch. MQS=QSR \times C_{it} . MQS=0 for those with no 1994 participation.

Regular QS Calculation: If the Council allocates MQS then Regular QS (RQS) will function as a kind of "reward" for additional participation outside the Minimum QS time period. If the Council does not allocate MQS then IFQs will be based solely on RQS.

- 0,000 No remainder calculation, i.e. all QS allocated with Minimum QS.
- 1,000 Sum of JVP and DAP catch\processing from 1/1/84 - 6/27/92.
- 2,000 Sum of JVP and DAP catch\processing from 1/1/84 - 12/31/94
- 3,000 $0.2 \times (\text{Sum of } 1/1/84 - 12/31/90) + 0.8 \times (\text{Sum of } 1/1/91 - 12/31/94)$
- 4,000 $0.4 \times (\text{Sum of } 1/1/84 - 12/31/90) + 0.6 \times (\text{Sum of } 1/1/91 - 12/31/94)$
- 5,000 $0.6 \times (\text{Sum of } 1/1/84 - 12/31/90) + 0.4 \times (\text{Sum of } 1/1/91 - 12/31/94)$
- 6,000 $0.8 \times (\text{Sum of } 1/1/84 - 12/31/90) + 0.2 \times (\text{Sum of } 1/1/91 - 12/31/94)$
- 7,000 Best year: 1991, 1992, 1993, or 1994.
- 8,000 Annual average from 91-94, i.e. $(\text{Total: } 1/1/91 - 12/31/94) \div 4$

Note: Harvesters QS includes all DAP and JVP data on or before 12/31/90 and all DAP catch on or after 1/1/91 as applicable. Processors QS includes only DAP data for entire QS calculation period.

Assignment of QS to Inshore or Offshore category.

- 000 No assignment to categories, allow two pie system to allocate to inshore and offshore.
- 100 DAP is based on disposition of catch, i.e. to inshore/offshore categories, all JVP is designated as Offshore.
- 200 DAP is based on disposition of catch, i.e. to inshore/offshore categories, JVP catch is distributed proportionate to DAP deliveries.
- 300 DAP is based on disposition of catch, i.e. to inshore/offshore categories, JVP catch is distributed to inshore and offshore categories based on the owners choice.

Assignment of QS to A season or B season (Options implied in proposal but specified by Staff.)

- 10 No assignment of QS by season. IFQs are split between A and B season upon issuance each year.
- 20 45% of each initial allocation of QS is assigned to A season and 55% of QS is assigned to B season.
- 30 Catch/processing history from January through May is assigned A season, from June through December to B season.

Minimum Amounts of PQS: to be received by catcher processors

- 0 No minimum
- 1 PQS must be greater than or equal to the HQS received by the processor.

Options which may be feasible additions to, or substitutes in, the hierarchy.

One or both of the following two option make the recent participation options more consistent with the License Limitation Program.

3,000,000 Must have fished from 6/27/92 - 6/17/95.

4,000,000 Must have fished from 1/1/92 - 6/17/95.

The following five could be added to the minimum QS options. In the existing minimum QS options, a vessel which did not participate in 1994 would not receive a minimum QS, and would have to rely solely on Regular QS. This would prove to be a very severe "penalty". In the additional options the "penalty" for not participating in the 1994 pollock fishery would not be as draconian. A QSR of 95% was not included in these additions because 95% approaches the maximum feasible QSR; if the Council wishes to base QS strictly on recent participation, then it could set the minimum QSR=0 and choose among last few options under regular QS. Additional information on the impacts of allocating a minimum QS are included in the of the "issues" paper.

30,000 QSR = 75%, " C_{it} " = individual's catch or processing in most recent year of participation from 91-94.

40,000 QSR = 75%, " C_{it} " = best year: 1991, 1992, 1993, or 1994.

50,000 QSR = 75%, " C_{it} " = annual average from 91-94, i.e. catch \div 4 (or processing \div 4).

60,000 QSR = 75%, " C_{it} " = participation average 91-94, i.e. catch \div # of years fished (or processing).

The following two options "fill out" the Regular QS options. The "participation average" shown here (and in option 50,000) is defined differently than the "annual average." The annual averages from 1991-1994 divides the sum of catch from 1991-1994 by four. This means that if a vessel did not participate in one of the four years then its annual average would be its three year total divided by four. The "participation average" sums the catch over the four year period but divides by the number of years of participation. Thus the vessel with three years of fishing would have a higher participation average than its annual average.

9,000 Participation Average from 91-94, i.e. catch \div # of years fished (or processing).

A,000 Most Recent Year of participation from 1991-1994.

SPECIES FOR INCLUSION

- Option A:** All species under Council jurisdiction, including PSCs, excluding demersal shelf rockfish.
- Option B:** Under Option A, a percentage (either 45% or historical split) of BSAI Pacific cod would be set aside for a fixed gear License Limitation program
- Option C:** All species under Council jurisdiction, including PSCs, excluding DSR and crab.

AREAS

IFQs for all species and PSCs will be awarded based on current management areas.

Option A: QS/IFQs for all species and PSC allotments will be awarded based on GLS area licenses.

CRITERIA FOR INITIAL QS QUALIFICATION

Option A: Initial QS will be awarded to current vessel owners as of the date of final Council action, based on the catch history of their vessel(s). In addition, the Council is considering the following:

Suboption: For GOA fixed gear fisheries, allocate initial QS to owner at time of landing.

Option B: Initial QS will be awarded to vessel owners holding a valid GLS license. Initial QS/IFQ allocations will be based upon GLS categories. This proposed IFQ system is based on, and will replace, the GLS license system. WS/IFQ will only be awarded to GLS license holders. QS/IFQ will be allocated and designated according to GLS categories for areas, species, catcher/catcher-processor, vessel sizes, and inshore/offshore.

The Council also is considering the following recent participation requirement for QS qualification:

Vessel must have fished in three-year period prior to June 24, 1992 and/or 3-year period before date of final Council action. If vessel is lost during this period, owner at time of loss is still eligible.

COMMUNITY DEVELOPMENT QUOTA (CDQ) CONSIDERATIONS

In addition to allocating QS to current vessel owners, the Council may make initial allocations to CDQs as shown below:

Option A: No allocations to CDQs.

Option B: Initially allocate 3%, 7.5%, 10%, or 15% (options range up to 15%) as CDQs; may apply to any or all groundfish/crab species, but only for BSAI communities meeting current CDQ eligibility requirements, patterned after current pollock CDQ program, with no sunset provisions.

IFQs - GROUND FISH AND CRAB

SKIPPER CONSIDERATIONS

The Council is also considering the following options for including skippers in the IFQ program.

Option A: No allocations to skippers.

Option B: Initially allocate 3%, 5%, or 10% (options range up to 10%) to 'bona fide' skippers (based on landings attributable to each skipper, or based on time spent in a given fishery).

Suboption A: For the purposes of initial allocations, a 'bonafide skipper' is any skipper who ran a vessel and landed groundfish or crab in a relevant fishery.

Suboption B: QS allocated under Option B shall form a separate QS pool. Subsequent transfers of QS in this pool shall be restricted to 'bona fide skippers.' For the purposes of subsequent transfers, a 'bonafide skipper' is any individual who received an initial skipper pool QS allocation or any individual who meets an industry approved "professionalization qualification scheme." (The intent is to provide for an entry-level access mechanism and to promote safety through professionalization. The qualifications cannot be overly restricting so as to create a closed class.)

Suboption C: For the purposes of initial allocations, a "bonafide skipper" is any skipper who ran a vessel and landed groundfish in a relevant fishery, as identified by the mandatory skipper reporting provision of the GLS system.

PROCESSOR CONSIDERATIONS

The following options are being considered relevant to processors:

Option A: Assign separate processor QS (2-pie system). See separate description for elements of this program.

Option B: Require a percentage of harvest IFQs to be delivered shoreside (% will be based on last two years' average for each species for BSAI and GOA separately).

Option C: Direct allocation of harvesting QS to catcher boats, catcher-processors and shorebased processor (1-pie system).

Note: The analysis will include the impacts of providing no protection to onshore processors.

Option D: Assign separate processor QS (2-pie system). See separate description for elements of this program. Require a minimum percentage of PS to be utilized inshore (% to be based on 1993-94 average).

Option E: Require a minimum percentage of harvest IFQs to be delivered inshore (% will be based on 1993-94 average for each species for BSAI & GOA separately).

Option F: All harvests based on QS/IFQ designated as "inshore" must be delivered inshore. This shall represent the minimum level of inshore deliveries.

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Option G: Direct allocation of harvesting QS to catcher boats, catcher-processors and shorebased processors (1-pie system). Require a minimum percentage QS/IFQ harvest to be delivered inshore (% to be based on 1993-94 average by species for BSAI and GOA separately.)

Note: The analysis will consider the impacts of no QS allocations to any person engaged in processing. This portion of the analysis should distinguish between industry sectors.

INITIAL QS CALCULATION

The following primary options are being considered for calculating QS of qualified recipients (all options will be analyzed on the basis of retained (when available) and reported catch).

Option A: QS based on catch of vessel from 1976 to either June 24, 1992 or date of final Council action (pre-1984 JV catch assigned based on average by fishery, by year, for vessels which participated).

For Option A, the following suboptions are being considered for weighting factors:

Suboption A: No weighting by sector.

Suboption B: Weight DAP 3.5:1 JV.

Suboption C: Weight DAP 2:1 JV.

Suboption D: For JV prior to 1986 and for DAP prior to 1989, weight at 2:1.

Option B: QS based on catch of vessel from date of full DAP (by species) to either June 24, 1992 or date of final Council action.

Option C: QS based on catch of vessel from 1993 only.

Option D: Analyze QS based on catch for 1990-91-92.

Option E: (1) To qualify, vessel must have fished in 1991, 1992, or 1993.
(2) Owner chooses best year from 1991, 1992, or 1993 as base for QS calculation (BSAI and GOA separately).
(3) QS credit then weighted based on length of involvement of vessel in each fishery since 1983. Base QS would be multiplied by length of involvement to determine total QS credit.

Suboption: The length of the involvement period multiplier may be further modified for the BSAI longline cod fishery to account for the relatively recent opening of that fishery. (Using 1983 as the base, each year in the fishery may be multiplied by 1.0, 1.5, or 2.0.)

Option F: A formula utilizes a blend of historical catch and recent participation combined with a range of weights for DAP and JVP participation. The formula under consideration is as follows:

Percentage Quota Share = W1 (Recent + W2 (weighted DAP/JVP)),

where; W1 and W2 = percentage weights summing to 100%

Recent = catch in 1991 - 1992

Weighted DAP:JVP = 1982-92 catch with: (option a) 1:1 DAP:JVP Ratio
(option b) 2:1 DAP:JVP Ratio
(option c) 3:5:1 DAP:JVP Ratio

IFQs - GROUND FISH AND CRAB

GLS ALTERNATIVES FOR QS CALCULATION

Initial QS awarded to each qualifying recipient based on GLS area licenses held. QS/IFQ designated according to GLS categories.

Option A: Analyze QS based on catch for 1990-91-92.

Suboption: For GOA fixed gear fisheries, allocate initial QS to owner at time of landings.

Option B: (1) Base for QS calculation (by area by species) determined by:

Suboption A: Owner chooses best year from 1991, 1992 or 1993 as base QS.

Suboption B: Owner's average catch from 1991, 1992, & 1993 to serve as base QS.

Suboption C: Owner chooses best year under GLS system to serve as base QS.

Suboption D: Owner's average catch from all years under GLS system serves as base QS.

Suboption E: Owner's catch under GLS system in year prior to implementation of IFQ system serves as base QS.

(2) QS credit then weighted based on length of involvement of vessel in each fishery since 1983. Base QS would be multiplied by length of involvement to determine total QS credit.

Suboption A: The length of the involvement period multiplier may be further modified for the BSAI longline cod fishery to account for the relatively recent opening of that fishery. (Using 1983 as the base, each year in the fishery may be multiplied by 1.0, 1.5, or 2.0.)

Suboption B: For GOA fixed gear fisheries, use length of involvement of owner, not vessel.

In addition to the options shown above, the Council is considering the following possible alternatives which are specific to Pacific cod in the BSAI. If either of the options below is chosen, the calculation alternatives shown above would still apply for the remaining fisheries.

Option A: Allocate Pacific cod QS at 45% for fixed gear recipients/55% for trawl gear.

Option B: Allocate Pacific cod QS by gear types based on historical split. We will examine: (1) back to 1976, (2) back to date of full DAP for Pacific cod, and (3) 1993 only to determine historical split.

Unless otherwise directed, the same QS calculations apply to divide QS among participants in each sector.

IFQs - GROUND FISH AND CRAB

TARGET/BYCATCH CALCULATIONS

For QS calculation alternatives described above, the following species will be considered target species:

BSAI

pollock
Pacific cod
Atka mackerel
yellowfin sole
other flatfish
rockfish
squid (fixed gear only)
rocksole
turbot

GOA

pollock
Pacific cod
deepwater flats
shallow water flats
Atka mackerel
rockfish

Whichever option is chosen, QS amounts for each species will be calculated based on catch, then adjusted based on average bycatch rates (or industry-derived bycatch rates) to achieve initial 'bundles' of target/bycatch species and PSC species. The Council has discussed the issue of basing QS calculations on retained, as opposed to reported, catch. As noted earlier, options will be analyzed on the basis of retained, when available, and reported catch.

TARGET/BYCATCH CALCULATIONS (As revised per GLS proposal)

For the QS calculation alternatives described above, the following species will be considered target species (conforms to GLS target species list):

BSAI

pollock
Pacific cod
Atka mackerel
yellowfin sole
other flatfish
rockfish
squid (fixed gear only)
rocksole¹
turbot

GOA

pollock
Pacific cod
deepwater flats
shallow water flats
Atka mackerel

Target species QS will be based on retained catch.

PSC bycatch allotments will be bundled directly to target species QS. PSC bycatch allotments for each PSC species will be calculated by applying average PSC bycatch rates to retained target species IFQ (adjusted as necessary to stay within PSC caps).

PSC bycatch allotment are not transferable except when bundled with target species QS/IFQ. Partial bundles are transferable only on a pro rata basis of target QS/IFQ to PSC bycatch allotment. The Council will annually determine PSC bycatch rates, caps, and allotments.

1/ The Council has previously decided to designate this fishery a target fishery. Given the extreme discard wastage associated with this fishery, the State of Alaska again notes its opposition to this designation.

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The full utilization provisions of the GLS system apply: Full retention and utilization of all target species for which a TAC exists (except PSCs), total catch measurements and monitoring, and total PSC enumeration but not retention unless provided for by other management/regulatory programs.

HARVEST PRIORITY IFQ MULTIPLIER

The harvest priority multiplier will provide an individual incentive/reward structure for PSC bycatch reduction. IFQ allocations for each target species fishery will be adjusted by an index that reflects individual bycatch mortality rates (the "harvest priority multiplier").

A) Harvest Priority Multiplier Calculations

Target species/gear type IFQ allocations in each area will be annually adjusted by a harvest priority multiplier as follows:

$$\text{IFQ}_{ix} = [Q_{ix}/TQ_x] \times \text{TAC}_x \times H_{ix}$$

where: IFQ_{ix} = individual i's pound of IFQ for target species X.

Q_{ix} = individual i's holding of quota shares for target species X

TQ_x = total quota shares for target species X

TAC_x = TAC for target species X

H_{ix} = individual i's harvest priority multiplier for target species X, where $H_{ix} = B_{px}/B_{ix}$, if H_{ix} is not specified directly (see option C below).

B_{px} = PSC bycatch mortality rate performance standard for participants in the target fishery for species X

B_{ix} = individual i's PSC bycatch mortality rate in the target fishery for species X

Options for analysis for defining the PSC bycatch rate performance standard (B_{px}) and/or the harvest priority multiplier (H_{ix}) are:

Option A: For a given year, the lowest PSC bycatch rate recorded among all participants in the target fishery for species X would be the performance standard (B_{px}).

Option B: For a given year, the PSC bycatch rate exceeded by a specified percentage of all participants in the target fishery for species X would be the performance standard (B_{px}). Under this option, participants with individual bycatch rates below the performance standard would be assigned a harvest priority multiplier of 1 (i.e., $H_{ix} = 1$). All other participants would be assigned a harvest priority multiplier according to the formula specified above (i.e. $H_{ix} = B_{px} / B_{ix}$). Options for analysis are:

Suboption A: The performance standard (B_{px}) would be set equivalent to the PSC bycatch rate exceeded by 75% of the participants in the target fishery for species X (i.e. top 25% get a multiplier of 1).

Suboption B: The performance standard (B_{px}) would be set equivalent to the PSC bycatch rate exceeded by 50% of the participants in the target fishery for species X.

Suboption C: For a given year, rank all participants according to PSC bycatch rates (from lowest to highest) recorded for the previous year then divided participants into quartiles based on this ranking. Directly assign specific harvest priority multipliers to each quartile. Options for analysis are:

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Suboption A: Participants in the first, second, third, and fourth quartiles would be assigned harvest priority multipliers of 1, 0.9, 0.8, and 0.7 respectively.

Suboption B: Participants in the first, second, third, and fourth quartiles would be assigned harvest priority multipliers, of 1, 0.9, 0.8, and 0.6 respectively.

B) Harvest Priority Multiplier Conditions

1) TAC shall not be exceeded.

2) Under situations where an unclaimed portion of the TAC results from applications of the harvest priority multiplier, the following are options for analysis:

Option A: Redistribute unclaimed portion of the TAC to fishers with individual PSC bycatch rates below the performance standard. Redistribution to be in relative proportion to the extent that recipients have fished "cleaner" than the performance standard, and shall be apportioned on a pro rata basis such that TAC is not exceeded.

Option B: Use the unclaimed TAC as an auction pool, with participants in the auction being restricted to only those fishers with individual PSC bycatch rates below the performance standard.

3) During the first implementation year, individual bycatch rates will be determined by averaging performance in target fisheries under the GLS system. For all subsequent years, bycatch rates will be determined by performance in the previous years (i.e., the year prior to the annual IFQ allocation). The Council may annually adjust specification of the performance standard and/or the harvest priority multiplier as part of the TAC specification process.

4) Transfers of QS/IFQ shall carry the previous year's harvest priority multiplier for the first year of use under new ownership/control.

TRANSFERABILITY PROVISIONS

Any or all of the following options may apply:

Option A: No restrictions.

Option B: Two year restriction on sales only (could lease).

Option C: For groundfish only, non-transferable between fixed and mobile gear categories.

Option D: For crab fisheries only, non-transferable across catcher vs. catcher/processor categories.

Option E: IFQs will not be tied to a particular gear type after initial issuance.

NOTE: Normal legal gear regulations will still apply, i.e., unless the Council changes its regulations, trawl gear could not be used to harvest crab.

Option F: Restrictions on QS transfers between inshore and offshore sectors. Range (of duration) for analysis to include 5 years, 10 years, and no transfers. This applies to both groundfish and crab.

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Option G: QS/IFQ not transferable across GLS categories.

Option H: QS/IFQ may only be transferred within GLS categories or from GLS catcher-processor to catcher vessel categories and from larger to smaller GLS catcher vessel size categories.

With regard to PSC QS/IFQ, 3 options are being considered:

Option A: PSC QS/IFQ are tied to initial bundles and are not transferable.

Option B: PSC QS/IFQ are tied to initial bundles and must be transferred with bundles.

Option C: PSC QS/IFQ are transferrable separately from the initial bundles.

USE/OWNERSHIP PROVISIONS

The following options are being considered relative to accounting under the IFQ program. These options will affect an operator's ability to match IFQs to catch, and also relate to the ability to manage the program effectively within the overall TACs.

Option A: Must control IFQs to cover expected catch before fishing.

Option B: overage program as with sablefish and halibut program.

Option C: QS/IFQ use is conditional upon: Full retention and utilization of all target species for which a TAC exists (except PSCs), total catch measurement and monitoring, and total PSC enumeration but not retention unless provided for by other management/regulatory programs. Non-compliance with any or all of these conditions may be grounds for suspension of IFQ and revocation of QS for multiple instances of non-compliance.

The following use/ownership provisions may also be considered by the Council:

Option A: Require a percent of harvest IFQs to be delivered shoreside (% will be based on average of the last 2 years' for each species). This option was also included under "PROCESSOR CONSIDERATIONS".

Option B: Ownership caps would be set at .1%, 1%, 5%, 10%, or any number in that range and would apply to the BSAI and GOA separately. Same caps would apply to the skippers' quota share pool. Skippers shares keep their identity after distribution. Initial allocants would be grandfathered.

ENFORCEMENT AND MONITORING REQUIREMENTS

An enforcement and monitoring plan must be developed by NMFS and approved by the Council as part of the IFQ system. Such a plan should clearly describe mechanisms for measuring and monitoring quota harvest and bycatch on an individual vessel basis. (constraints imposed by current confidentiality) requirements should be addressed). The plan should also clearly describe provisions for designating parts of landing and specific mechanisms to prevent leakage, including measures to monitor at-sea transshipments and provisions to measure and record harvests on an individual vessel basis prior to transporting product into waters outside the jurisdiction of the U.S. The plan should include a review of enforcement and monitoring experience in other U.S. IFQ programs. A review of the accuracy of previous enforcement cost estimates should be included.

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GENERAL PROVISIONS

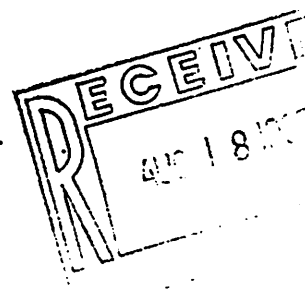
- * Allocations represent a use privilege; however, the Council could alter or rescind the program without compensation.
- * Council should pursue some level of administrative fee extraction to fund program, if Magnuson Act is amended.
- * The U.S. ownership definitions used in the Halibut/Sablefish IFQ regulations should be used in analyzing both the initial issuance and the subsequent transfer of QS/IFQs. Would examine the implications of foreign ownership including an analysis of the Pacific Council's foreign ownership provisions.
- * An analysis of the impact of various fee collection levels and mechanisms is required. The analysis will differentiate between administrative fees and rents.
- * The U.S. citizenship/controlling interest definitions used in Title 46 §802 should be used in analyzing both the initial issuance and the subsequent transfer of QS/IFQs. This analysis should examine the implications of foreign ownership including an analysis of the Pacific Council's foreign ownership provisions. This analysis should also address ownership or control of QS/IFQ by lien holders and/or lending institutions.
- * An analysis of the impact of various rent collection levels and mechanisms is required. This analysis should include consideration of state and federal taxes and fees imposed on industry as well as management, enforcement and other costs borne by state and federal governments in support of industry.
- * An analysis of the feasibility and implementation of IFQ management with in-season TAC adjustments is required.
- * An analysis of constraints on management and implementation of IFQ systems posed by present confidentiality requirements is required.
- * A report on results from the halibut/sablefish IFQ post-implementation monitoring program (mandated under the GLS system) is required as part of the overall analysis.
- * An analysis of the extent to which current confidentiality requirements impede Council compliance with MFCMA requirements for review of allocation scenarios is required. The mandate that assignments of fishing privileges shall be "fair and equitable to all such fishermen . . . carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges" is particularly pertinent to this requirement.

**Groundfish Plan Amendment Proposal
North Pacific Fishery Management Council**

RE: Vessel Bycatch Accounting Program (VBA)

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Date: August 15, 1995



Fishery Management Plan: BSAI Groundfish FMP

Nature of Proposal

This proposal would establish a new bycatch management program for the BSAI trawl fisheries. The program is based on an allocation of PSC (halibut, *bairdi* and red king crab) to individual vessels. Once a vessel's PSC allotment is reached, it not longer would be allowed to fish in the directed fishery, unless it obtained additional bycatch.

What follows is a broad outline of the various options to consider in analyzing our proposal.

1. Allocation of VBAs
 - 1.1 Annual allocation of VBAs issued to individual groundfish operations prior to the start of each fishing year based on a formula that would be specified in the FMPs or regulations.
 - 1.1.1 Allocation by
 - a. specific species (directed fishery) and/or a group of species
 - b. one allocation for all BSAI bottom trawl fisheries
 1. Exempt MW pollock
 - 1.1.2 Factors included in the formula
 - a. Three year, rolling average of an individual's catch
 - b. Vessel size categories
 - 1.2 One time allocation of VBAs, or ongoing right, similar to a quota share. Each operation would have an annual 'Vessel Bycatch Account' as determined by a percentage of the allowed PSC.
 - 1.3 VBAs could be sold by the government, either at a set price or at auction
 - 1.3.1 Require individuals to purchase 25% of their allocated VBAs
- (Would require a Magnuson Act amendment)
2. Transferability of VBAs
 - 2.1 VBAs could be fully transferable
 - 2.1.1 restricted or unrestricted to a fishery

- 2.2 VBAs not allowed to be transferred, what you get is what you use
- 2.3 VBAs could be "pooled" by a group of vessels
- 3. Retention of Bycatch (PSCs under a VBA program)
 - 3.1 Retention not allowed
 - 3.2 Retention allowed, with forfeiture at time of landing
 - to address issues of sampling error (accuracy) and observer 'cop' role
 - 3.3 Careful return to sea within a set time period, then retained until counted
- 4. Monitoring of a VBA Program
 - 4.1 Observer data from current year could be used
 - 4.2 Sampling design of existing Observer Program may need change
 - require whole haul sampling, do away with basket sampling?
 - require daily reporting rather than weekly
 - 4.3 Requiring retention of VBA species may be necessary to have adequate monitoring
- 5. Species to be considered for a VBA Program
 - 5.1 Halibut, Red King crab, tanner crab (*bairdi*) and herring
- 6. Total VBAs could be:
 - 6.1 limited to the current PSC limits
 - 6.2 Set allowable PSC limit to a set percentage of the biomass estimate (floating cap)
 - 6.3 option to allow Council to 'ratchet down' PSC limit
- 7. Current Time/Area/Cap Closures could be:
 - 7.1 retained
 - 7.2 eliminated
- 8. Current PSC allowances to separate fisheries could be:
 - 8.1 retained
 - 8.2 eliminated
- 9. Coverage. A VBA program could apply to:
 - 9.1 only groundfish operations with 100% observer coverage
 - 9.2 all groundfish operations during the time there is at-sea observer coverage
 - apply an average rate of observed vessels to vessels with less than 100% coverage
 - 9.3 Vessels that are moratorium/license limitation qualified
- 10. Enforcement
 - 10.1 Need for limiting the issues that are challengeable and
 - 10.2 Placing the burden of proof on the fishing operation
 - Pursue a system of 'Implied Consent'

11. Appeals

- 11.1 Allow for an in-port accounting immediately after a vessel uses its entire VBA
- 11.2 Establish an industry appeals committee to review all contested bycatch accountings within a specified period of time

12. Administration

- 12.1 Accounting of bycatch by use of the observer program data

Need of the Plan Amendment

The current method of bycatch management (PSC caps, time/area closures, VIP violations) is broken and does not achieve its stated objective. Under the present system, there is a race for the PSC species along with the race for the directed fishery species, resulting in not achieving OY, poor use of PSCs and providing the opportunity for a few "bad actors" to prematurely close fisheries.

Objectives of the Proposal

A VBA bycatch management system will achieve the following objectives:

- 1. **Effective incentive.** Establish a bycatch management system that effectively provides individual vessels the incentive to minimize their bycatch rates. Establish a system that serves as a deterrent to high bycatch rates.
- 2. **Individual Accountability.** Provide for a system that holds vessels individually accountable for their use of bycatch.
- 3. **Achievement of Optimum Yield.** Establish a bycatch system that allows for the fleet to harvest up to OY annually.
- 4. **Optimal use of bycatch.** Establish a bycatch management system that maximizes the achievement of catching the TAC, with the minimal amount of PSC.

Are There Other Alternatives

Yes, the Council could move toward an ITQ system of management for the trawl and crab fisheries within which the bycatch species could be bundled and allocated to individual vessels.

Who Wins, Who Loses

If the harvest of OY is viewed as a benefit, then the public benefits when the TACs which cannot be harvested due to PSC time/area closures are harvested under a better bycatch management system. Fishermen who fish "clean" benefit by having the opportunity to fish for the entire TAC. Fishermen who fish "dirty" will lose by being excluded from fisheries in which they used up their allotted PSC amounts.

Supportive Data

NMFS observer data, NMFS catch records, and NPFMC bycatch analyses for previous amendments

A Discussion of Guaranteed Minimums in the Pollock IFQ Program

An option included in the proposed pollock IFQ program would allocate vessels a guaranteed percentage of their 1994 BSAI pollock catch. This minimum percentage, as proposed, would range from 75 to 95%. The remaining portion of the fishery would be allocated based on an individual's catch history prior to 1994. The pre 1994 catch history, as proposed, could go back as far as 1984 with various weighting schemes for different time periods.

A definition of the guaranteed minimum percentage of an individual's 1994 catch must be provided. The guaranteed minimum will allocate a percent of the TQSP (total quota share pool). If the Council selects 75% to be the guaranteed minimum percent, then 75% of the TQSP will be allocated based on 1994 catch. The remaining 25% of the TQSP will come from catch prior to 1994. The purpose of allocating a guaranteed minimum percent is to protect an individual's relative harvest position in relation to the 1994 pollock fishery. The guaranteed minimum does not give the right to catch a specific amount of BSAI pollock in future years. For example, should a future BSAI pollock TAC be larger than the 1994 TAC, an individual would be allocated IFQ for more than 75% of their 1994 catch. The opposite is also true. If the TAC in some future year is less than it was in 1994 the person will be issued IFQ for less than 75% of their 1994 catch. This is a common sense result when stocks fluctuate and an individual has the right to harvest a given percentage of the fishery.

Table 1 is a preliminary report of the catch of BSAI pollock vessels that "qualify" for the proposed license limitation program. If we assume that these are the vessels that would be included in the IFQ program, we can use this catch as an example of how a guaranteed minimum would work. The first column in Table 1 shows the years the vessel had trawl landings of BSAI pollock between 1992 and 1994. The second column shows the number of vessels that fished that combination of years. Columns three through five are the vessels estimated annual catch, based on the license limitation program data set. The sixth column sums the catch in 1992-94. Finally, the last three columns are the average catch by vessel for 1992, 1993, and 1994.

Table 1. Reported Trawl Gear Pollock Catch by Vessels that "Qualify" under the License Limitation Program.

Years Fished	Vessels	Metric Tons of Landings						
		1992	1993	1994	Total	1992 Avg	1993 Avg.	1994 Avg.
92	13	4,504	0	0	4,504	346	0	0
92 and 93	14	10,937	8,856	0	19,793	781	633	0
92, 93, and 94	123	1,174,619	1,160,609	1,212,209	3,547,437	9,550	9,436	9,855
92 and 94	5	4,068	0	1,562	5,630	814	0	312
93	7	0	832	0	832	0	119	0
93 and 94	9	0	30,709	29,586	60,295	0	3,412	3,287
94	10	0	0	2,462	2,462	0	0	246
Total	181	1,194,129	1,200,465	1,245,819	3,640,413	n/a	n/a	n/a

Next assume that we have the catch history of two vessels and a well defined program. This fictitious IFQ program will guarantee vessels that fished in 1994 75% of their 1994 catch. The remaining portion of the

TQSP will be based on catch history from 1992 and 1993. Each of the vessels that we will study had exactly the same total landings between 1992 and 1994. Each of the vessels catch history is presented in Table 2.

Table 2.

Vessel	1992	1993	1994	Total
A	0	1,000	1,000	2,000
B	1,000	1,000	0	2,000

Now we will calculate the number of QS that each of these vessels will receive. Vessel A fished in 1994 and will be issued QS based on 75% of his landings. That calculation yields 750 QS. The guaranteed minimum QS (MQS) for the entire fleet are 934,364. Therefore the remaining QS that will be issued as RQS must equal 311,455 (i.e. 25% of the total QS pool must be RQS). Table 1 shows that the catch in 1992 and 1993 summed to 2,394,594 (1,194,129 + 1,200,465) metric tons. To make the RQS equal 311,455, each metric ton of landings during those years would equal 0.13 RQS. So, the owner of vessel A would have earned 130 RQS. Adding his MQS and RQS gives a total of 880 QS. Vessel B did not make any BSAI pollock landings in 1994 so does not receive any MQS. He does get RQS for both his 1992 and 1993 catch. The 2,000 metric tons of catch equates to 260 (2000*0.13) QS. Now we can calculate the metric tons of IFQ that our two vessels owners would receive if the TAC fell to 1.2 million metric tons. This calculation yields $(1,200,00/1,245,819) * 880 = 848$ for vessel A and $(1,200,00/1,245,819) * 260 = 250$ QS for vessel B. A summary of these results are listed in Table 3.

Table 3.

Vessel	MQS	RQS	Total QS	Metric Tons of IFQ (TAC=1.2 million mt)
A	750	130	880	848
B	0	130	260	250

This example shows the impact that not having reported any pollock catch in 1994 can have on the distribution. If the guaranteed minimum was based on the most recent year of participation, and not just on 1994, these two vessels would have been issued the same amount of IFQ.

The above example points out the fact that an IFQ program that includes a guaranteed minimum reduces the need for extended catch histories. Because most of the QS are earned during the year(s) with the guaranteed minimum, including catch history with JV or DAP weights back to 1984 will have little impact on the final QS distribution.

Issues Regarding the Inclusion of Bottom Trawling in the Pollock IFQ Program

A key decision point in the pollock IFQ program will determine whether the program will allow bottom trawling, or whether only mid-water trawling only will be allowed. This decision is critical because it largely determines the complexity of the management of the program. If bottom trawling for pollock is allowed under the IFQ program then decisions will also have to be made regarding the issues below. If bottom trawling is not allowed in the IFQ then these issues are moot.

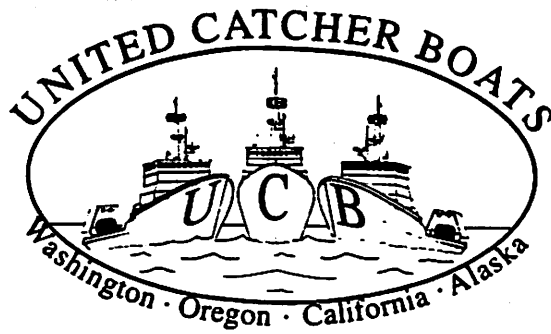
1. Determine whether to allocate two types of pollock QS "Bottom QS" and "Midwater QS", or rather to allow bottom trawling by issuing sufficient PSCs.
2. If separate Bottom QS, then determine allocation method.
3. If separate Bottom QS, then apportion the Directed Pollock TAC between midwater and bottom.
4. If separate Bottom QS, then determine transferability between bottom and midwater.
5. Develop separate PSC program for bottom trawl pollock.
 - a. Will crab bycatch shut down individual or force individuals out of an area.
 - b. Will halibut bycatch shut down individual or force individual into midwater.
6. Determine Allocation of Bottom Trawl PSC species to individual.
7. Develop a program to manage bycatch of other groundfish in bottom pollock fisheries.
 - a. Apportion some amount of other groundfish to the Bottom IFQ pollock fishery, i.e., P.cod, Yellowfin Sole, Rock Sole etc. in order to prevent race for these species by IFQ holders.
 - b. No apportionment of groundfish, and close bottom pollock when a bycatch species TAC is taken.
 - i. Allow Bottom QS to be used as Midwater QS.
8. Determine relationship to processor QS. Will there be Bottom Harvest QS and Bottom Processor QS?
9. Allow bottom pollock to operate under open access with a separate apportionment.

The decision to allow bottom trawling in the pollock IFQ program should not be made on management expediency alone. Many vessels and processors depend on bottom trawling for pollock, for a significant part of their annual income. Discussions with industry indicate that bottom trawling will allow the capture of larger older fish which produce higher quality fillets. Additionally, bottom trawling is supposed to be somewhat less demanding in terms of horsepower, and in particular the need to have auxiliary trawl engines. These two points would lead to the inference that bottom trawlers will tend to be factory trawlers which focus production on fillets, catcher vessels delivering to motherships or shore plants which focus on fillets, or small trawlers with less horsepower. Eliminating bottom trawling will likely create some hardship for these operations.

To determine the amount of bottom trawling in the industry the Weekly Production Database for 1994 from NMFS was queried. This data distinguishes bottom or pelagic gear for motherships and catcher processors, but not for shore plants, because of differences in observer coverages. None-the-less from the table at least 13% of the pollock harvested in 1994 was with bottom gear. Some of the bottom trawl pollock catch was in non-pollock fisheries; only 85% of all pollock was harvest in the pollock fisheries in 1994 [1994 blend data]. However some of the shore-plant catches were also likely to have been with bottom gear. More detailed queries will need to be made to determine these amounts more accurately, but it is likely that bottom gear accounted for less than 20% of the directed pollock fisheries.

1994 Weekly Production Data. Pollock by Gear					
	Bottom	Midwater	Unspecified Trawl	Total	Bottom %
Motherships	10,817	140,250	NA	151,067	7%
Catcher/Processors	163,847	525,287	NA	689,134	24%
Shore-Plants	NA	NA	472,717	472,717	NA
Total	174,664	665,537	472,717	1,312,918	13

Brent C. Paine
Executive Director



Steve Hughes
Technical Director

June 8, 1995

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99501

Re: Vessel Bycatch Account Program

Dear Rick,

Attached is an outline of a proposal a number of industry people have been developing as an alternative to the current method of bycatch management in the North Pacific. We submit it to the Council for discussion purposes and also request the Council task its and NMFS's staff to begin an analysis of this proposal.

We believe that if the Council is intent on recommending a license limitation program for our groundfish and crab fisheries at the June Council meeting, then in order to address one of the major issues originally posed by the Committee of the Whole, that of better management of bycatch, the Council should also recommend analysis of our proposal. Simply put, license limitation does not change the management of bycatch in the North Pacific. Thus it does not address current problem of premature closures of various fisheries because of a few individual vessels' extremely high bycatch rates.

The Vessel Bycatch Account Program (VBAP) proposal grew out of our frustration due to the closures to various Bering Sea fisheries due to attainment of PSC well before attainment of the TAC. The most recent example of this is this years' Zone 1 closure to P. cod trawl fishing due to *bairdi* PSC as well as a total BSAI closure to P. cod trawling with over 30,000 mt of fish left on the table!

Looking at the vessel by vessel PSC data provided by NMFS, we find again and again that a few bad actors' fishing behavior accounting for very high amounts of PSC. Their actions, given the current regulatory framework of time/area closures triggered by a PSC cap, cause the whole fleet, good and bad actors alike, to suffer. We are tired of being impacted by others' actions.

The Current Vessel Incentive Program, after a four year period, just isn't providing the incentive to get individual operators to stay under the established bycatch rate standards. We have testified previously to the Council as to why this is so.

Our proposal focuses on 'real-time' incentives, similar to the original "penalty box" proposal introduced years ago by Captain Barry Fisher. It makes individuals accountable for their own actions, and keeps the effects of their actions at the individual level, thereby allowing the 'clean' actors to receive a benefit for their attempts at fishing with low bycatch rates, allows for a system of achieving OY, and lastly, optimizes the use of PSC.

Please review the attached proposal. It has gained widespread endorsement among the fishing community.

Sincerely,



Brent Paine
Executive Director



Steve Hughes
Technical Advisor

**Options and Issues of a
VESSEL BYCATCH ACCOUNTING PROGRAM**
Prepared by United Catcher Boats Association

I. Principles of a VBA Program

1. Effective incentive. Establish a bycatch management system that effectively provides individual vessels the incentive to minimize their bycatch rates. Establish a system that serves as a deterrent to high bycatch rates.
2. Individual Accountability. Provide for a system that holds vessels individually accountable for their use of bycatch.
3. Achievement of Optimum Yield. Establish a bycatch system that allows for the fleet to harvest up to OY annually.
4. Optimal use of bycatch. Establish a bycatch management system that maximizes the achievement of catching the TAC, with the minimal amount of PSC.
5. Transferability. To fully achieve OY, VBAs need to be tradable.
6. Pooling. Allow for small groups of vessels to work together to maximize their use of their allocated VBAs.

II. VBA Program Options

1. Allocation of VBAs
 - 1.1 Annual allocation of VBAs issued to individual groundfish operations prior to the start of each fishing year based on a formula that would be specified in the FMPs or regulations.
 - 1.1.1 Allocation by
 - a. specific species (directed fishery) and/or a group of species
 - b. one allocation for all BSAI bottom trawl fisheries
 1. Exempt MW pollock
 - 1.1.2 Factors included in the formula
 - a. Three year, rolling average of an individual's catch
 - b. Vessel size categories
 - 1.2 One time allocation of VBAs, or ongoing right, similar to a quota share. Each operation would have an annual 'Vessel Bycatch Account' as determined by a percentage of the allowed PSC.
 - 1.3 VBAs could be sold by the government, either at a set price or at auction
 - 1.3.1 Require individuals to purchase 25% of their allocated VBAs
- (Would require a Magnuson Act amendment)

2. **Transferability of VBAs**
 - 2.1 VBAs could be fully transferable
 - 2.1.1 restricted or unrestricted to a fishery
 - 2.2 VBAs not allowed to be transferred, what you get is what you use
 - 2.3 VBAs could be "pooled" by a group of vessels
3. **Retention of Bycatch (PSCs under a VBA program)**
 - 3.1 Retention not allowed
 - 3.2 Retention allowed, with forfeiture at time of landing
 - to address issues of sampling error (accuracy) and observer 'cop' role
 - 3.3 Careful return to sea within a set time period, then retained until counted
4. **Monitoring of a VBA Program**
 - 4.1 Observer data from current year could be used
 - 4.2 Sampling design of existing Observer Program may need change
 - require whole haul sampling, do away with basket sampling?
 - require daily reporting rather than weekly
 - 4.3 Requiring retention of VBA species may be necessary to have adequate monitoring
5. **Species to be considered for a VBA Program**
 - 5.1 Halibut, Red King crab, tanner crab (*bairdi*) and herring
6. **Total VBAs could be:**
 - 6.1 limited to the current PSC limits
 - 6.2 Set allowable PSC limit to a set percentage of the biomass estimate (floating cap)
 - 6.3 option to allow Council to 'ratchet down' PSC limit
7. **Current Time/Area/Cap Closures could be:**
 - 7.1 retained
 - 7.2 eliminated
8. **Current PSC allowances to separate fisheries could be:**
 - 8.1 retained
 - 8.2 eliminated
9. **Coverage. A VBA program could apply to:**
 - 9.1 only groundfish operations with 100% observer coverage
 - 9.2 all groundfish operations during the time there is at-sea observer coverage
 - apply an average rate of observed vessels to vessels with less than 100% coverage
 - 9.3 Vessels that are moratorium/license limitation qualified

10. Enforcement
 - 10.1 Need for limiting the issues that are challengeable and
 - 10.2 Placing the burden of proof on the fishing operation
 - Pursue a system of 'Implied Consent'
11. Appeals
 - 11.1 Allow for an in-port accounting immediately after a vessel uses its entire VBA
 - 11.2 Establish an industry appeals committee to review all contested bycatch accountings within a specified period of time
12. Administration
 - 12.1 Accounting of bycatch by use of the observer program data

III. Key Issues to be Resolved for VBA Programs

Technical/Legal Issues

1. A key issue with any program that holds vessels individually accountable for their estimated bycatch is our ability to use observer data for such a program for all vessels without incurring unacceptably high monitoring, enforcement, and legal costs. Can the observer program provide adequate estimates of absolute bycatch or bycatch mortality by operation for a fishing year as a whole for vessels with 100% observer coverage? Such estimates would be extrapolations from sampled hauls. Which of the following may help?
 - A. Use the lower bound of the confidence interval rather than the point estimate of bycatch as the estimate of each vessel's bycatch.
 - B. Use estimates for the year as a whole rather than for a week or month.
 - C. Have the regulations say what will happen on the basis of estimated bycatch as opposed to actual bycatch and have the method of estimation specified clearly.
 - D. Have a backup method for estimating bycatch for a vessel when some of the observer data/methods are not adequate.
 - E. Have an industry advisory body to assist with appeals.
 - F. Use the concept of implied consent as part of the permit process to have people accept being held accountable based on a specified estimation procedure.

- G. Use previous year's data for a vessel to estimate its bycatch rate and let the vessel use current year data to demonstrate it is doing better.
 - H. Use some other method to establish assumed bycatch rate and let the vessel use current year data to demonstrate it is doing better.
 - I. Each vessels with less than 100% coverage could have the option of having 100% observer coverage, although perhaps at its own expense.
 - J. Provide observers with better tools (notebook Pcs, data and communication softwear, calibrated bins, electronic scales).
2. If the procedures for estimating bycatch are specified clearly, is there a limited time during which the procedures can be challenged, after which the only legal challenge is whether the procedures were followed?
 3. Can a vessel with less than 100% observer coverage be held accountable for its bycatch or bycatch mortality based on the best available estimate of its bycatch? The considerations listed for item 1 also apply to this question. Does it matter if each vessel has the option of having 100% observer coverage, although perhaps at its own expense?
 4. Are there specific legal problems for any of the VBA options listed above?
 5. Given the current "Research Plan" regulations governing the observer program, how will additional costs, if necessary, be covered?

Policy/Equity Issues

1. Should vessels be exempted from the VBA program when they do not have observer coverage?
2. Will the size of the PSC limits be addressed?
3. What will be the basis for allocating VBAs?

Implementation Issues

1. What additional monitoring/administration systems and resources are required by an VBA program?
2. What changes in the observer program are required by an VBA program?

3. How long will it take to implement an VBA program?
4. What changes to the Magnuson Act would be requires to allow NMFS to collect funds from the sale of annual VBAs to then be used to fund the VBA program? Can NMFS establish a dedicated fund?

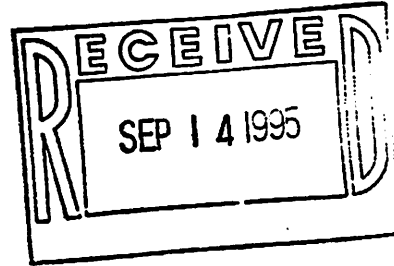


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September 13, 1995



Dr. Clarence Pautzke, Executive Director
North Pacific Fisheries Management Council
605 West 4th Avenue
Anchorage, AK 99510

Dear Clarence:

When I first brought the notion of symmetric catching and processing rights before the Council, I was encouraged by the SSC to formalize my ideas, have them peer reviewed in a scholarly journal, and, if they could stand scrutiny, bring them back to the Council. I am pleased to inform you that the enclosed paper, "Toward a More Complete Model of Individual Transferable Fishing Quotas: Implications of Incorporating the Processing Sector," was accepted in August 1995 for publication in the *Journal of Environmental Economics and Management*." I chose this journal because it is the most prestigious natural resource economics journal in the nation. Fully cognizant that I was proposing a radical departure from the orthodoxy of rights-based fishing literature and limited worldwide experience with ITQs, I wanted to be certain the reviews were thorough and critical. I certainly did not wish to mislead the Council or error in any way that could damage any of the industry participants. The stakes--people's livelihood--were too great to leave this issue to anything less than the highest standard of peer review.

Acceptance of this paper by *JEEM* establishes a symmetric allocation of quota shares to both catchers and processors as policy-superior to the traditional harvester-only allocation. The paper formally and rigorously shows how and why a harvester-only initial allocation will unintentionally expropriate wealth from the processing sector and transfer it to the harvesting sector. The regulatory expropriation mechanism is exactly the same as if all rights initially were allocated only to the processing sector. Processors then would extract price concessions from catchers--an equally unacceptable policy outcome. Cavalier arguments by economists that efficiency is well-served with either polar initial allocation are intolerable when a symmetric allocation achieves an identical efficiency gain with no uncompensated redistribution of wealth.

Please bring this article into the Council process. Because of its rigorous technical content, SSC review is appropriate. In addition, I request that you also distribute the paper to the Council because the less technical introduction and discussion sections provide crucial policy insight. It is my expectation that the SSC will concur with the scientific findings of this journal article. If so, I will urge the SSC to recommend the harvester-only initial allocation should be removed from further Council/staff consideration. The paper shows an asymmetric allocation to be without public-policy merit in the North Pacific context, unless it is the Council's explicit objective to take wealth and property from the processing sector and redistribute it to the harvesting sector.

The enclosed paper is the property of *JEEM* and is released for Council use with permission from the editor. The paper should be cited as:

Matulich, Scott C., Ron C. Mittelhammer, and Carlos Reberte. "Toward a More Complete Model of Individual Transferable Fishing Quotas: Implications of Incorporating the Processing Sector." *Journal of Environmental Economics and Management*, Forthcoming.

Sincerely,



Scott C. Matulich
Professor

scott1@pauzke.iig

cc: Terry Quinn
Keith Criddle
Doug Larson
Rich Marasco
Marcus Hartley

EXCERPTED FROM:

**TOWARD A MORE COMPLETE MODEL OF INDIVIDUAL
TRANSFERABLE FISHING QUOTAS: IMPLICATIONS
OF INCORPORATING THE PROCESSING SECTOR**

By

Scott C. Matulich, Ron C. Mittelhammer, and Carlos Reberte*

Accepted for Publication, August 1995
Journal of Environmental Economics Management

*The authors, are respectively, professor of agricultural economics, professor of agricultural economics and adjunct professor of statistics, and post-doctoral research associate. Matulich and Mittelhammer are at Washington State University, Pullman and Reberte is at Cornell University, Ithaca. Senior authorship is not assigned.

Proposed running head: **Including Processors in ITQs**

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Acknowledgment

We wish to thank the anonymous reviewers, the associate editor, and editor for their constructive criticisms. Jeff Krautkraemer, Phil Wandschneider, and Steve Polasky are also owed our gratitude for helping us simplify and clarify the analysis. Finally, we wish to thank the North Pacific fisheries industry for helping us conceptualize the issues addressed in this paper. This research was supported by the College of Agriculture and Home Economics, Washington State University.

**TOWARD A MORE COMPLETE MODEL OF INDIVIDUAL
TRANSFERABLE FISHING QUOTAS: IMPLICATIONS
OF INCORPORATING THE PROCESSING SECTOR**

ABSTRACT

Economic analyses of individual transferable quota (ITQ) fisheries management traditionally have focused on the harvesting sector. However, harvester decisions impact the economic performance of co-dependent processing firms. This paper incorporates both sectors in an analysis of the effect of ITQs on commercial fisheries. Results show that, as a consequence of season elongation under a harvester-only allocation of fishing rights, capital nonmalleability implies processor quasi-rents will be redistributed to harvesters. These losses could promote political gridlock and jeopardize adoption of an ITQ policy unless they are fully compensated or unless redistribution is avoided by a policy-superior initial allocation of rights to both harvesters and processors.

Discussion

Inclusion of the processing sector is essential to analyzing both pricing efficiency and distributional impacts of a switch to rights-based fisheries management whenever processing capital is less than perfectly malleable. Open access property institutions that cause fleet overcapitalization and the race to fish also foster a level of capitalization in the processing sector sufficient to service the accompanying race to process. A traditional, harvester-only initial allocation of transferable fishing rights has the intended impact of ridding the harvesting sector of redundant capital. However, such an asymmetric ITQ policy design can also impact the cost structure and exvessel pricing behavior of the processing sector during the transition from an open access equilibrium where normal returns are earned to a long-run ITQ equilibrium.

The singular focus on problems related to an overcapitalized harvesting sector has caused the profession to recommend ameliorative policies that do not fully reflect the institutional structure of commercial fisheries nor the political realities of changing property institutions. The analysis presented in this paper demonstrates that in the usual presence of less than perfectly malleable capital, a traditional ITQ policy design unintentionally disenfranchises the codependent processing sector by transferring some of its composite quasi-rents to the harvesting sector during the transition period. Some processors will be forced to exit, transferring their entire wealth to the harvesting sector through exvessel price concessions. Others that do survive will have forfeited some quasi-rents to the harvesting sector during the transition period—possibly a long period of time. This conclusion derives from the fact that during the transition period the price of quota shares captures not only resource rents but also

the quasi-rents to all fixed factors dedicated to the fishery. Both the duration and extent of transitional losses in the processing sector are increasing functions of the degree of capital nonmalleability.

We also showed that once processors exit and a long-run ITQ equilibrium is established, surviving processors may gain quasi-rents (nominal dollars) relative to the status quo open access equilibrium. Total processing sector surpluses will also increase providing processing capital is not perfectly malleable. Nevertheless, this conclusion is hardly consensus building in the political forum where policy change is decided. All policy-induced losses to the processors are uncompensated. We believe this is a major impediment to adopting market exchange solutions to fisheries management. Only if processing capital were perfectly malleable would the much discussed increase in harvesting quasi-rents derive only from efficiency gains in the harvesting sector. One would be hard pressed to identify such a fishery, unless the entire fishery were vertically integrated.

The mechanism of regulatory quasi-rent expropriation was identified in this paper and shown to be independent of a change in finished product price. A harvester-only initial allocation gives fishers the flexibility to reduce the daily rate of harvest and extend the season, thereby lowering the marginal and average variable costs of fishing until unit quasi-rents are maximized. Furthermore, fishers can consolidate (further elongating the season) through quota-share trading under the protection of explicit harvesting rights that guarantee all trades are fully compensated. The fleet will consolidate to a core of efficient vessels for which further gains from quota trade are not possible.

Processors receive no such protection; they must choose their optimal rate of throughput consistent with the season length determined by the harvesting sector. For a given TAC, season elongation reduces throughput per day in a processing sector that was initially capitalized to meet the throughput requirements of overcapitalized, open access fisheries. This creates additional processing capacity and associated excess demand per unit of time for raw fish at open access exvessel prices. Unlike the harvesting sector, however, processors lack the rights necessary to operate in a protected excess demand situation or to purchase processing rights from a less efficient competitor. Instead, processors eliminate their excess demand for raw fish by bidding up exvessel price, and thereby, transfer some or all of their *status quo* processing quasi-rents to the harvesting sector. Raw fish market price and quantity return to equilibrium only when the aggregate fleet rate of harvest equals the aggregate processing sector demand for raw fish.

Annual compensation equal to their lost quasi-rents would leave processors no worse off and avert political gridlock. Such compensation, if it could be empirically defined (a doubtful proposition), presumably would be funded through a quota or landings tax. However, section 1854(d) of the Magnuson Act [31] specifically forbids charging fees in excess of the administrative costs incurred in issuing limited access permits.⁸ Alternatively, the regulatory quasi-rent expropriation question could be avoided altogether by pursuing a policy-superior initial allocation in which symmetrical rights are issued to both sectors.⁹ By symmetrical, we mean an initial allocation of rights that preserves the distribution of wealth prior to quota-share trading and also preserves the *status quo* price formation process. The

intent of a symmetrical rights distribution would be to ensure that subsequent transfers of rights by all parties were fully compensated through the market for these rights.

The optimal specification of such a symmetric rights assignment is not obvious and deserves further research. Candidates worthy of consideration include: (1) a 50:50 split of harvest quota shares between fishers and processors; (2) a "two-pie" allocation, in which catching rights are awarded to fishers and processing rights are awarded to processors; and (3) full-utilization quota shares, in which fishers and processors are each awarded a paired bundle of catching and processing rights. A "use-it-or-lose-it" provision may be required so that the TAC isn't reduced for vicarious (conservation) use at less than its full market value—the value of catching plus processing net of variable costs. In any case, the results of this paper suggest the need for considering alternatives to the traditional ITQ scheme of endowing fishers with property rights and endowing processors with the consequences.

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Monitoring Individual Vessel Performance

National Marine Fisheries Service
Alaska Region
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The Council and NMFS currently are considering several proposals which would require NMFS to monitor individual vessel performance standards or quotas. These proposals include individual transferable quotas (ITQs), community development quotas (CDQs), individual bycatch quotas (IBQs) and the Harvest Priority (HP) program. Although NMFS currently manages several programs based on individual vessel accountability, the proposed programs are more complex, primarily because they would require timely and accurate data for vessels and NMFS to know when a performance standard or quota had been reached and because this data likely would be collected by observers. Although the objectives and elements of these proposed programs may differ, effective implementation of any of them will require approximately the same type of monitoring and enforcement system. Neither the detailed elements or the estimated cost of this system has yet been determined.

This discussion paper compares current individual vessel monitoring programs with the proposed programs and identifies the elements they have in common and the elements that distinguish them. In addition, recommendations about issues to consider in designing an individual vessel monitoring program are made, and the information that is still needed in order to determine whether these programs can be effectively implemented is identified.

Comparison of current and proposed individual vessel monitoring programs

Table 1 summarizes the elements of current and proposed individual vessel monitoring programs. The current programs include retainable bycatch amounts (RBAs) or directed fishing standards, the Vessel Incentive Program (VIP), halibut and sablefish ITQs and CDQs, and pollock CDQs. Proposed programs include the expanded CDQ program recommended by the Council in June 1995, the HP program proposed by the Alaska Marine Conservation Council, a proposed ITQ program for Bering Sea and Aleutian Islands management area (BSAI) pollock, and a proposed IBQ program (or Vessel Bycatch Accounts) for the BSAI trawl fisheries.

The characteristics that distinguish current and proposed programs include (1) the activity that is being monitored or controlled, (2) the basis on which the determination is made that the performance standard or quota has been achieved or exceeded, (3) the source of information for that determination, and (4) the action that must be taken by the vessel or processor if the standard or quota is reached or exceeded. Table 1 also includes information about whether unobserved vessels are included in the program, whether an overage provision exists, and any other additional requirements of the program.

Table 1. Comparison of elements of current and proposed individual vessel monitoring programs.

Elements of program	Existing Individual Vessel Monitoring Programs				Proposed Individual Vessel Monitoring Programs				
	RBA or DFS	VIP	Pollock CDQ	Hal/Sable ITQ/CDQ	Bycatch Pools	Pollock ITQ	IBQ/VBA for PSC	All Groundfish CDQ	HP
What is being monitored?	retained catch composition	halibut and crab bycatch rate	pollock catch	halibut and sablefish catch	pools PSC bycatch weight	pollock and PSC	halibut red king cr. bycatch	all groundfish and PSC	all species total catch, discard rates
Basis of determination	landed weight and RWE (1)	rate in sample	total pollock weight	landed weight	weight of PSC by species	weight of pollock and PSC	weight of PSC by species	weight of all groundfish and PSC	weight of all species, PSC, non-allocated
Source of estimate	industry report	observer	observer	industry report	observer	observer	observer	?	observer
Action required if reach standard or quota	discard	penalty	CDP stops fishing	discard or stop fishing (2)	pool stops fishing	vessel stops fishing	vessel stops fishing	CDP stops fishing	no access to reward fishery
Include unobserved vessels?	yes	no	no	yes	no (3)	no	no	?	no
Overage provision	discard required	no	no	yes	?	?	?	?	?
Additional requirements		sampling procedure	two observers bins/scales	reporting requirements	?	?	?	?	?

1. round weight equivalent as determined by applying standard product recovery rates to processors' reports of processed product.
2. ITQ holders of both species may continue fishing once they've reached the quota for the first species, and are required to discard additional catch of that species.
3. depends on the purpose of the bycatch pool - a pool could be used specifically to manage the bycatch of a group of unobserved vessels.

What is being monitored?

Current individual vessel monitoring programs either require monitoring based on vessel or processor reports to NMFS or on limited information from observers' reports. For example, accounting for RBAs is based only on retained catch composition, not on total catch composition, because of lack of reliable estimates of at-sea discards. Calculation of bycatch rates for the VIP is based only on the catch composition of observers' samples, not on the total catch of the vessel, because of the uncertainty associated with expanding observers' estimates of bycatch to the catch as a whole. The pollock CDQ program requires monitoring only of pollock catch, catch of all other species accrue to open access total allowable catch (TAC) or prohibited species catch (PSC) limits. The halibut and sablefish ITQs and CDQs are determined by landed catch weight and don't include estimates of unreported at-sea discards, if they occur. Catch of other species accrue to open access TAC and PSC limits.

Proposed individual vessel monitoring programs will require monitoring of the total catch of more than one species, some of which is discarded at sea, or monitoring bycatch and discard rates for all catch by species.

The pollock ITQ proposal would require estimates of the total catch weight of pollock, halibut, and crab for individual vessels.

The IBQ or VBA proposal would require estimates of the total catch weight of halibut, red king crab, tanner crab, and herring for individual vessels.

The expanded CDQ program would require estimates of the total catch weight of all species, including prohibited species under each Community Development Plan (CDP). This may require accounting for individual vessels or groups of vessels.

The HP proposal would require estimates of the total catch weight of all species, the amount that was retained or discarded, and utilization rates.

Basis of determination and source of estimate

The type and source of information used to make the determination that a performance standard or quota has been reached or exceeded differs among the various programs.

Both RBAs and the halibut and sablefish ITQ and CDQ programs are based on industry reports of either retained or landed catch weight. RBAs are based on either back-calculation of processed product weight to round weight or on landed catch composition. The halibut and sablefish ITQ and CDQ program are based, for the most part, on landed catch composition, although some ITQ and CDQ is processed at sea. Accounting for catch under these programs does not rely on observer coverage levels or observers' estimates. Vessels or processors report to NMFS. The monitoring and enforcement system is based on verifying the accuracy of these reports.

The VIP and the pollock CDQ programs are, on the other hand, based on observer collected data. Calculation of bycatch rates under the VIP require observers to follow specific sampling procedures. Only the bycatch rate in the sampled catch is used, and observers' sample data are not expanded to the catch as a whole. If the observer does not follow these procedures, the affected bycatch will not be included in determining the VIP rate. The pollock CDQ program relies exclusively on observers' estimates of pollock catch, but requires observer coverage of all catch, and certified holding bins or scales to do so. Low bycatch rates in the pollock fisheries simplify the process of applying species composition sampling data to the total catch weight estimate. In some cases, all of the bycatch can be separated from the pollock catch and weighed.

Each of the proposed individual vessel monitoring programs would require information about the total catch weight of more than one species. For example, the pollock ITQ program would include pollock and up to four prohibited species. The IBQ program or bycatch pool could include up to four prohibited species. The expanded CDQ program would include all groundfish species for which a TAC is specified and probably all prohibited species. The HP program could require the monitoring of catch and utilization of all groundfish, prohibited species, and non-allocated species.

Increased observer coverage requirements are likely for these proposed programs, with the possible exception of bycatch pools for an unobserved portion of the fleet or a small boat component of the CDQ fisheries. Current observer sampling procedures were designed to provide estimates of the catch of each species for fleet-wide quota monitoring. A re-evaluation of existing procedures must be done in order to recommend the changes in procedures that would be necessary to provide reliable estimates of the catch weight of each species for an individual vessel. A procedure, or a level of observer coverage, which may be judged statistically valid still may not be acceptable for other compliance monitoring reasons.

All of the proposed individual vessel monitoring programs include performance standards or quotas for prohibited species bycatch which is required to be discarded. In addition, the expanded CDQ program and the HP also include standards or quotas for groundfish species which are likely to be discarded. Accounting for individual catch of species that are discarded, either by regulation or for economic reasons, is more difficult than accounting for catch of species for which the majority are retained or landed. If vessel fishing activity will be limited by the catch of these species, greater incentive exists to discard these fish before they are accounted for by an observer.

What action must be taken if standard or quota exceeded?

Current programs require that a variety of actions be taken by the vessel or processor if performance standards or quotas are achieved. For example, fishermen are required to discard catch in excess of RBAs. The VIP is based only on bycatch rates in catch sampled by an observer. Fishermen are expected to take action to avoid excessive bycatch rates before halibut and red king crab are brought onboard the vessel but are not permitted to discard to achieve the

rate standards. However, because rates are averaged over a month, the influence of high bycatch rates in some hauls can be reduced by subsequent hauls with lower bycatch rates. This balancing can be accomplished by harvesting groundfish that is later discarded. Violation of the VIP standards has not, to date, prevented a vessel from continuing to fish.

The halibut and sablefish ITQ and CDQ program allows fishermen with ITQs for both halibut and sablefish to continue to fish for the other ITQ species once the first quota has been reached. They are required to discard any catch of the species for which they have no quota remaining. In addition, catch of other groundfish accrue to the open access TACs and would not cause an ITQ or CDQ holder to stop fishing before the ITQ or CDQ had been fully harvested. The pollock CDQ program regulates the catch of one species and allows the catch of other species to accrue to open access TACs and PSC limits. Once the vessels fishing under a CDP have reached their pollock CDQ, they must stop fishing.

The IBQ, bycatch pool, and pollock ITQ program probably will require fishermen to stop fishing once their quota of *any* of regulated species was caught although catch of any non-quota species could continue to accrue to open access TACs. In other words, the quota reached first will constrain all other fishing activity unless additional quota can be obtained. The expanded groundfish CDQ program would require fishermen to stop fishing once their allocation of any groundfish or prohibited species had been reached and would not allow the accrual of some catch or bycatch to open access TACs or PSC limits to allow fishing to continue. Although the HP program would require monitoring of multiple species, fishermen would not be required to stop fishing once they exceeded a performance standard, however, they would be prohibited from participating in the reward fishery if they exceeded any of the performance standards. These restrictive requirements will place a tremendous emphasis on the methods used to establish the catch weight of all species. The more elements of the catch that can be used to stop a vessel from fishing, the more time will be devoted to debating the accuracy of the estimates.

Considerations in designing an individual vessel monitoring program

Effective implementation of the proposed individual vessel monitoring programs will require vessels to have timely and accurate information about their catch of a variety of species in order for them to know when they have exceeded a performance standard or when they should stop fishing. Whether that data are provided by the vessel or through the NMFS-certified observer has not yet been determined. However, NMFS and NOAA General Counsel will be expected to enforce determinations that quotas have been reached and to minimize the opportunities for vessels to continue fishing once they've reached their quotas. In light of this expectation, NMFS and NOAA General Counsel advise the Council that programs requiring individual vessel accountability should be designed with the following in mind:

- NMFS can establish regulations that require a vessel or processor to take some action once a certain performance standard or quota has been reached. For example, the halibut and sablefish ITQ and CDQ programs, and the pollock CDQ program, require vessels or CDPs to stop fishing once they've reached their quota.

- If a vessel fails to take this action, NMFS and NOAA General Counsel must decide whether to penalize the vessel for violation of the regulations. For example, if a vessel fails to meet VIP standards, they are subject to a penalty. Similarly, if vessels fail to stop fishing once they've reached their quota, they are subject to a penalty. However, NMFS and NOAA General Counsel decide which vessels will be pursued and the penalty that will be sought. In all cases, once a penalty has been assessed against a vessel, each has the right to appeal that penalty and to have a full administrative hearing before an ALJ before that penalty is imposed.
- An action by NMFS or NOAA General Counsel to stop a vessel from fishing or to "take a vessel off the water" is a seizure. Seizures are rare and are considered a last-resort enforcement action as a result of either a gross violation or a consistent pattern of violations. The data on which a determination to seize a vessel is made must be highly reliable.
- NMFS can establish overage provisions that would reduce next year's quota on a one-for-one basis for any quota overages that occur. Reductions in quota overages can be determined by NMFS and appeals need only be decided by the Regional Director. An overage provision in a quota-based program provides a mechanism to more quickly address some degree of quota overages. However, gross quota overages would still have to be pursued through enforcement actions. Vessels subject to penalties for gross quota overages would be allowed to continue fishing while their appeal was being resolved unless their behavior warranted vessel seizure.
- Vessels or processors cannot be required to waive their due process rights as a condition of their permit. For example, they cannot be bound by their observer data with no right to appeal determinations made on the basis of these data. In addition, NMFS does not believe that allowing vessels to "volunteer" to waive their rights would address the frustrations associated with some vessels or processors failing to comply with regulations and the length of time it takes to prosecute these violations.
- Determinations made on the basis of data submitted and signed by the vessel operator or processor are subject to higher in-season compliance and fewer appeals. However, these monitoring systems require NMFS resources to audit submitted reports and to provide a field presence to maximize accurate reporting.
- Determinations made on the basis of observer collected data, especially determinations made by expanding sampling data to the catch as a whole, are subject to error and must pass through some quality controls (e.g. "debriefing") before NMFS and NOAA General Counsel can rely upon them in an enforcement action. NOAA General Counsel will not force a vessel to stop fishing on the basis of unevaluated observer data. The quality control checks and the resulting lag time in enforcement action are necessary to minimize the number of incorrect determinations.

- Effective implementation will depend on vessels believing that performance standards or quotas will be enforced. Success of the program will be reduced if vessels perceive that they may not face a penalty for quota overages, that they can successfully argue the determination of their catch amount, or if the penalty they face does not provide a large enough incentive for them to stop fishing (is a "cost of doing business").
- The accuracy and timeliness of data and the agency resources to monitor and enforce the program limits are critical elements to successful implementation.

Recommendations for developing an individual vessel monitoring plan

As part of the analysis of any proposed programs, NMFS must prepare an implementation plan which describes how individual vessel performance will be monitored and enforced, and the estimated cost of the program to industry and the agency. In order to present options for the implementation plan, NMFS must determine the following:

1. observer sampling procedures for estimating the total catch of each species

Catch and bycatch by individual vessels likely will be based primarily on observers' estimates of total catch weight and species composition. NMFS currently is developing proposed regulations to require scales on at-sea processors in the pollock fisheries. These regulations could be used to govern the use of scales on any at-sea processor in the future, including hook and line and pot vessels. However, the question of the appropriate sampling procedures to estimate the species composition of the catch on an individual vessel have not yet been developed. NMFS has issued a Request for Proposals for a comprehensive review of observer sampling procedures. One of the objectives of this research is to provide recommendations to NMFS on the sampling procedures necessary to estimate individual vessel catch. Final recommendations from this research are not expected until late 1996.

2. standards for electronic transmission of observer data and industry reports;
3. the amount of additional observer coverage that will be required;
4. source and funding for additional observer coverage and agency staff;

Additional NMFS Alaska Region and NOAA General Counsel staff will be required to administer, monitor, and enforce any of the proposed individual vessel monitoring programs. Both agencies are facing requirements for reductions in force, and additional staff is highly unlikely at this time. NMFS could change priorities and assign staff from different regions or programs within the Alaska Region. However, this alternative probably does not exist to provide additional General Counsel staff. As a long term solution to this problem, and once the Research Plan questions are resolved, the Council and industry may wish to consider alternatives to fund additional administrative and monitoring functions of NMFS through some type of cost recovery program.

APPENDIX
Additional Detail on Current and Proposed
Individual Vessel Monitoring Programs

Current individual vessel monitoring programs

Retainable bycatch amounts

Retainable bycatch amounts, or directed fishing standards, are used to determine the amount of a species or species group that may be retained onboard a vessel if the directed fishery for that species is closed. They are used primarily to slow harvests as the total allowable catch (TAC) is approached. Catch in excess of RBAs must be discarded.

NMFS monitors RBAs for catcher vessels on the basis of landed catch weight and for processor vessels on the basis of the round weight equivalent of processed product as determined by applying standard product recovery rates to reported processed product. Monitoring is based primarily on field checks by the U.S. Coast Guard or NMFS Enforcement and on audits of submitted reports. The observer has no role in monitoring RBAs.

Groundfish quota monitoring and RBA monitoring are not directly linked. In other words, in-season management of the quotas does not require that all vessels operate within RBAs. Appeals are limited because the program is based primarily on landings or production reports submitted to NMFS. However, vessel operators would not be prevented from fishing while the appeal is pursued.

Monitoring catch composition and compliance with closures to directed fishing on the basis of total catch composition was discussed prior to implementation of the original directed fishing regulations and continues to be suggested. However, NMFS has determined that monitoring total catch composition currently is not possible for several reasons. Vessel reports of at-sea discards are not considered reliable for purposes of monitoring individual vessel performance. Sufficient observer coverage does not exist to monitor all catch and, even on observed vessels, current procedures for estimating total catch weight and species composition currently are not believed to be adequate to monitor individual vessel catch composition, particularly for catch discarded at sea. In addition, the Council at the time determined that holding individual vessels responsible for catch before it was brought onboard the vessel was not appropriate. Therefore, a system was established based on retained catch composition, which could be verified after the fact, and which allowed fishermen to discard to stay within established limits.

The Vessel Incentive Program

The Vessel Incentive Program (VIP) was developed to limit halibut and red king crab bycatch rates in the trawl fisheries. Bycatch rate standards are established for specific trawl fishery categories. Accounting for bycatch rates is based solely on information supplied by an observer under procedures defined in regulation. Rates are calculated on a monthly basis. Only hauls sampled according to specific sampling procedures are included in the bycatch rate calculation and bycatch rates in the sample are not extrapolated to unsampled catch in the haul or in other hauls.

The VIP is a penalty based program which sets performance standards and then relies on enforcement through either monetary fines or seizures. The effects of penalties on fishermen's behavior probably will not be fully realized until a number of cases are successfully prosecuted. The lag time between implementation of the program and successful prosecution of enough cases to convince people to stay within VIP rates has resulted in the general impression that the VIP is not successful. In addition, those people who have either fished differently to stay within VIP rates or have paid fines to resolve VIP violations feel that they are penalized by a system that allows others to continue to fish with high bycatch rates and contribute to early fishery closures that affect all participants. In other words, the VIP has yet to offer an effective disincentive for some individual vessels to reduce bycatch rates.

As with RBAs, in-season management of the quotas does not require that all vessels operate within VIP standards, and no vessel operator has, as yet, been prevented from fishing as a result of a pending VIP violation.

Halibut and sablefish ITQ and CDQ programs

The halibut and sablefish ITQ and CDQ programs allocate a share of the annual halibut and sablefish quotas to individual fishermen or Western Alaska communities. An accounting based system is used to monitor and enforce the program. Accounting is based on landed catch weight, processing, and shipment reports to NMFS and enforcement is based on at-sea and dockside field monitoring and auditing of reports. Prior notice of IFQ landing allows NMFS to monitor the ITQ landing. Also, the information provided with the prior notice can be compared with the information provided with the landing report. The ITQ product weight in the landing report can be compared to the ITQ product weight in the shipment report for correlation.

Each fisherman is issued a "swipe-card" which is used to report landings amounts to NMFS and to provide ITQ balance information. In the case of the CDQ program, the managing organization management groups may request CDQ cards to be prepared for an unlimited number of individuals who will then be authorized to land halibut and sablefish under their CDQ. ITQ holders must stop fishing once they've harvested their quota. The CDQ group is responsible for assuring that the combined catch of all participants does not exceed the overall CDQ for their group. Overages of up to 10 percent are deducted from the next year's quota. Determination of overage amounts is made by NMFS and participants can appeal this

determination to the Regional Director. Overages in excess of 10 percent are prosecuted through Enforcement and General Counsel. ITQ holders appealing prosecution for large overages would be allowed to continue fishing on their ITQ (which would be reduced by the 10 percent portion of the overage) while the appeal was being resolved.

Most vessels are unobserved and, even on observed vessels, observers reports are not used to monitor individual vessel performance. Approximately 63 percent of the halibut ITQ and 41 percent of the sablefish ITQ is harvested on vessels with no observer coverage; 34 percent of the halibut ITQ and 41 percent of the sablefish ITQ is harvested on vessels required to have observer coverage for 30 percent of their groundfish fishing time, and less than 3 percent of the halibut ITQ; and 18 percent of the sablefish ITQ is harvested by freezer vessels with varying observer coverage requirements.

Vessels participating in the halibut CDQ program are primarily skiffs or vessels less than 40 feet. Approximately 850 vessels were listed in the CDQ plans, however, it is not yet known how many vessels will actually participate. Approximately 457 mt sablefish CDQ (93 percent) will be harvested by three longline catcher/processors and 33 mt (7 percent) will be harvested by eight 32 foot catcher vessels. The longline catcher/processors are all 30 percent observed vessels, although the level of observer coverage during their CDQ fisheries is not yet known.

Both halibut and sablefish have been harvested primarily in single species target fisheries and landed at shoreside processing plants. The ITQ and CDQ programs require NMFS to monitor only the halibut and sablefish catch of an individual vessel. ITQ and CDQ holders are required to retain all legal sized ITQ or CDQ species while they have ITQ, and discard it after they have reached their ITQ. In other words, fishing does not have to stop until they have used up all their ITQ or CDQ because they are allowed to discard the other species in order to continue their ITQ or CDQ fisheries. In addition, they are required to retain all cod and rockfish unless these species are on bycatch or PSC status.

Unlike RBAs and the VIP, in-season management of halibut and sablefish quotas does require that all vessels operate within their ITQs or CDQs. Substantial overages could cause a TAC or quota to be exceeded. Overages in the halibut and sablefish CDQ program may be a factor in determining allocations to community groups in future years.

Pollock CDQ program

The pollock CDQ program is managed on the basis of observer reports of total catch weight and species composition for at-sea processors and on landed catch weight for catcher vessels. In 1995, 18 trawl catcher/processors, six trawl catcher vessels, and two shoreside processors participated in the pollock CDQ fishery. All processor vessels are required to have two observers to provide independent estimates of the total catch weight and species composition sampling for each CDQ haul. In addition, processor vessels are required to have either measured, marked, and certified fish-receiving bins for volumetric estimates of total catch, or scales to weigh total catch. Catcher vessels must have one observer and shoreside plants must

have an observer present during landing of all CDQ catch. Observers submit daily reports to both the CDQ managing organizations and the NMFS Regional Office. NMFS staff calculates the official pollock catch by applying the proportion of pollock in the sample to the total catch weight of each haul. Although the CDP's managing partners are responsible for monitoring quotas and assuring that quotas are not exceeded, NMFS also monitors these vessels on a daily basis while they are participating in a CDQ fishery.

Pollock CDQs require NMFS to manage only the catch of one species on participating vessels. Once the pollock CDQ is reached, the vessel or vessels must stop fishing. Groundfish bycatch accrues against the open access quotas for these species groups and prohibited species bycatch accrues against the open access limits.

Although the Council requested that NMFS also implement PSC limits for each CDP, NMFS has not yet implemented this recommendation due to the additional monitoring requirements that this regulation would involve and to low levels of bycatch in the pollock CDQ fisheries. A 7.5 percent apportionment of the pollock PSC limits would not have been exceeded by the pollock CDQ fisheries in 1994.

Proposed individual vessel monitoring programs

Proposed CDQ expansion

The Council recommended that NMFS expand the CDQ fisheries to include 7.5 percent of all groundfish TACs in the BSAI. CDQ groups will be required to use their groundfish CDQs to account for all catch, bycatch, and discards by vessels fishing under their CDP. In addition, the Council may consider separate PSC limits for the CDQ fisheries.

An expanded CDQ program will require NMFS to develop a monitoring program to provide accurate and timely information about the catch and bycatch by vessels fishing under each CDP, ranging from small, unobserved catcher vessels to large, at-sea processors. The monitoring program likely will be a blend of the existing CDQ programs. Two groups of vessels and processors currently participate in the CDQ fisheries - those that do not or cannot carry observers and those that will be required to have all catch observed. For the unobserved vessels, landed catch weight can be used as it is under the halibut and sablefish CDQ program. At-sea discards of groundfish or prohibited species bycatch could be estimated for the fleet as a whole and deducted from the CDQ. Observed vessels may include trawl, hook-and-line, or pot vessels. The monitoring requirements could be based on either the pollock CDQ model or the halibut and sablefish CDQ model. In other words, they could be based either on observers' estimates of catch or on landings or production reports.

Consistent monitoring requirements should be established by vessel type or category rather than by species group. In other words, vessels of a particular gear type and size should have the same monitoring requirements in all of the expanded CDQ fisheries. For example, participation of hook-and-line processor vessels in both the sablefish CDQ program and the expanded groundfish

CDQ program will require standardized accounting methods, including a means to account for halibut and groundfish bycatch. Processor vessels currently participating in the pollock CDQ program would have to account for all bycatch and discards in their pollock CDQ fisheries under the expanded CDQ program.

The expanded CDQ program would require NMFS to manage the catch of all species on participating vessels. Once any quota had been reached, the vessel or vessels would be required to obtain more quota or stop fishing even if they had remaining quota of other species.

Individual bycatch quotas

Individual bycatch quotas have been proposed as a means to hold individual vessels accountable for prohibited species bycatch amounts. A recent proposal suggests IBQs or Vessel Bycatch Accounts (VBAs) for the BSAI trawl fisheries. Each vessel would receive a prohibited species bycatch quota for halibut, red king crab, tanner crab, and herring. Once any one of these quotas had been reached, and no additional quota could be obtained, the vessel would be required to stop fishing.

IBQs would require NMFS to estimate the total weight or numbers of PSC bycatch for an individual vessel. Monitoring would be based on observers' estimates of the bycatch of halibut, crab, and herring. Although additional observer coverage may not be required for sampling purposes, it is likely to be required on many vessels just for compliance monitoring. However, even two observers on each vessel would not be able to monitor all activities on the vessel to assure that discards were not being made prior to sampling or enumeration. Although this problem is not unique to the IBQ proposal, or to individual vessel monitoring programs in general, a program that would require a vessel to stop fishing once an individual PSC limit is reached will increase the incentive to discard before the catch is sampled by an observer.

The proposal offers two options that would improve accounting for PSC under an IBQ. First, retention of PSC species could be required. Under this option, processors could be required to weigh or count PSC and the U.S. Coast Guard or NMFS Enforcement would have the opportunity to verify vessel or processor reports. A second option would be to count only those PSC that are retained onboard beyond a certain time. In this case, the practice of sorting and discarding from the deck would be allowed rather than being an unknown component of error in observers' PSC catch estimates. However, unauthorized discards would likely still occur beyond the time limit and from unobserved locations on the vessel.

Pooling Individual Bycatch Quotas

The option of allocating PSC limits to a group of vessels rather than to individual vessels has been proposed as a means of increasing individual vessel accountability without requiring the level of individual vessel monitoring that may be needed for IBQs. Vessels would form groups, or pools, each pool would be allocated a certain amount of PSC, and a managing organization would be responsible for establishing performance standards for members of the pool and for

monitoring individual vessel bycatch. Whether a vessel continued to fish in the pool's allocation would be determined by the managing organization, not NMFS. NMFS would continue to monitor PSC bycatch either under current or modified estimation procedures and would require all vessels fishing in the pool to cease fishing once the pool's quota had been reached.

The rationale behind the bycatch pool concept is that NMFS can use the best available information to monitor a group of vessels, and close fishing by all these vessels once it has determined that catch or bycatch limits have been reached. The standards of proof are less stringent for a group of vessels than for an individual vessel. Large pools conceivably could be managed with the same level of observer coverage and the same catch and bycatch estimation procedures as currently are used to monitor the open access fisheries. However, as the number of pools increase and the number of participants in each pool decreases, the monitoring requirements of the pool will approach those of an individual vessel monitoring program.

One of the primary difficulties that arose with the idea in the past was the request that NMFS enforce the determinations of the managing organizations. In other words, NMFS would be responsible for enforcing the decision by the managing organization that a particular vessel could no longer participate in the pool. This role would have placed the same requirements on NMFS as an IBQ program. If the bycatch pool concept is to provide implementation advantages over an IBQ program, this problem will have to be resolved.

Pollock ITQs

The proposed BSAI pollock ITQ program would allocate pollock and prohibited species catch to catcher vessels, catcher/processors, and processors. Once a quota had been reached, a vessel would be required to stop fishing or a processor would be required to stop taking deliveries of pollock. The pollock ITQ program would require NMFS to monitor pollock catch and prohibited species bycatch. All other catch would accrue to the open access TACs.

The proposal suggests that all catch would have to be observed as it is harvested, transferred, and processed and that catch and bycatch estimates would be based on observers' reports. The pollock ITQ proposal also suggests the possibility of requiring designated ports of landing or transfer, and transponders to track vessel location to improve monitoring.

The Harvest Priority Program

The HP program has been proposed as a means to reduce or control bycatch and discards of groundfish, prohibited species, and non-allocated species. All participating vessels would be required to have all catch observed. Bycatch and discard rates standards would be established for individual vessels and vessels that failed to meet all standards would be prohibited from fishing in a subsequent "reward fishery". The Council will be required to identify which target fisheries would operate under the HP program, the specific bycatch and discard rate standards, and the nature of the reward fishery. NMFS would be responsible to monitor individual vessel

performance and issue determinations as to compliance with bycatch and discard rates standards in time to prevent ineligible vessels from participating in the reward fishery.

One distinguishing feature of the HP program is the proposal to monitor individual vessel *discard rates*. The other existing and proposed programs are based on monitoring catch or bycatch rates or amounts. The distinction is important in terms of the complexity of the monitoring system that will be required. Catch or bycatch is the amount of a particular species caught, landed, or killed while estimates of discard rates would require information about what was done with the fish once brought onboard the vessel. Observers currently make estimates of the catch weight of each species based on the best available information which may include independent estimates of total catch weight, species composition sampling, or vessel or processor logbooks. Observer estimates of the proportion of each species retained or discarded are provided for informational purposes only, they are not a priority, and current estimation procedures are not sufficient to monitor individual vessel discard rate standards nor is it likely that they can be "improved" to provide this level of accuracy without substantial cost.

Due to the variation in actual product recovery rates and the difficulty of establishing an average PRR for a vessel, NMFS is recommending that the Council not combine observers' estimates of total catch weight with the round weight estimate of retained catch (determined by applying PRRs to product weight) in order to estimate retention or discard rates for an individual vessel. While this estimate may be useful in identifying vessels with discard rates substantially above the standard, it would not be sufficient to make the determinations required for the HP program.

A second distinguishing characteristic of the HP program is the need for NMFS to enforce determinations on all ineligible vessels in order for those vessels that complied with the performance standards to receive the full compensation for their efforts. In an IBQ type program, each vessel receives an allocation of prohibited species catch and they may continue to fish until they have used their quota. The incentive for reduced bycatch rates is increased groundfish catch, and, in order for the program to be successful, this incentive must not be reduced if other vessels exceed their IBQ. However, with the HP program, the incentive for meeting performance standards is participation in the reward fishery. The fewer number of vessels in the reward fishery, the greater the incentive. NOAA General Counsel has determined that NMFS cannot prevent a vessel from participating in the reward fishery if they have an unresolved appeal. Therefore, if NMFS cannot successfully resolve all appeals, the reward to eligible vessels is diminished. NMFS very well could face appeals from both those determined ineligible and from others who believe a competitor should have been ruled ineligible.

Submitted for RECORDED
9/28/95 C-3

September 28, 1995

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

Re: Limited License Plan

The potential impacts of the Limited License Plan passed by the Council in June are still being analyzed. As with any major change in management systems, there will be fine tuning required but in this case I believe there needs to be more than just fine tuning if this plan is to ultimately be approved by the Secretary. Some of the major flaws include:

1. Vessels that qualify for a license and endorsements based solely on landings within State waters while vessels that were moratorium qualified, had a federal fisheries permit and landings in federal water may be excluded if they didn't meet the endorsement criteria.
2. Inequitable landing criteria for different areas which require multiple years and landing in the central and eastern GOA while only one landing is required for the western GOA.
3. The elimination of trawl gear from the Eastern GOA with a lack of justification.
4. Overly restrictive ownership caps which preclude the ability of certain companies to grow and increase the likelihood of capital stuffing while at the same time limiting transfers which could reduce overall capitalization. (refer to my letter to the Council June 9, 1995 regarding license ownership caps).
5. The creation of a system which will be difficult to transcend due to tradeable assets (licenses and endorsements).

Klaus Benson
Dir. Govt. Affairs
Tyson Seafood Group



Tyson Seafood Group, Inc. 1900 West Nickerson Street, Suite 200 • Seattle, WA 98119 • (206) 282-3445

June 9, 1995

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

Re: License Ownership Caps

The North Pacific Fishery Management Council has put the fishing industry on notice that it is preparing to take final action on a license limitation scheme at the June meeting. In spite of several years of preparation and analyses there are still some issues which deserve further investigation. One of those issues is ownership caps and the attempt to limit consolidation of ownership.

The original options to be analyzed were: no limit, 5, 10 and 15 licenses. At the April meeting the Council chose preferred alternatives of either no limit or a maximum of 5 area licenses. All options on caps include grandfather provisions which guarantees licenses for all qualified vessels regardless of how many any one entity owns. However, further growth is prohibited. On page 16 of the March 9, 1995 Supplemental Analysis it states "If the ownership cap were set at five licenses, six vessel owners would be at or in excess of the cap and would need to sell at least one of their licenses before they would be allowed to purchase another." Tyson Seafood Group is one of those six owners that would be in excess. This would clearly limit our ability to customize areas to suit vessel capabilities and production needs.

For a value added company like Tyson Foods, which depends on an adequate supply of resource to develop products and markets for seafood, an unreasonable ownership restriction is viewed as discriminatory and a restraint of trade. Our company maintains a large research and development facility which is continually engaged in creating and testing new products to provide the customer with competitively priced, easy to prepare seafood. We believe it is new product development which will lead the way to increased consumption of seafood in the United States which will in turn provide more jobs and new markets for both fully utilized and underutilized species.

We believe The U.S. anti-trust laws provide adequate protection against excessive consolidation. Numerous safeguards have been proposed in the license limitation plan which are designed to protect the character of the small boat fleet which has been one of the objectives of the Council. Ultimately, the decision rests with individual owners with regard to selling or not selling licenses.

It is difficult to understand why such restrictions are placed on the fishing industry while other resource industries (mining, oil, timber) have few such restrictions. The intent of the Council has been to reduce capitalization in the industry yet the effect of ownership restrictions runs counter to that goal. If license packages are non-severable (the preferred Council option) then it is likely persons seeking an additional area endorsement may have to also buy a package which may include an area they already have and in so doing will effectively consolidate two sub-area licenses into one, furthering the goal of de-capitalization. Restrictive ownership caps will preclude that from happening.

Those marginal participants who want to sell may not be able to sell if a larger, more efficient operation wants to expand. This will be especially true if licenses are designated by three length classes and catcher or catcher/processor modes in addition to the non-severability by area. The Council has already indicated its preference for these options. Markets for willing sellers may be limited and a reduction in fleet size will be less likely. The more restrictions which are placed on transferability and use, the less value licenses will have. Preventing owners from acquiring more than five licenses will almost certainly encourage 'capital stuffing' in order to more effectively compete.

The proposed license ownership cap is also subject to a number of legal deficiencies. It has as its purpose influencing the economics of allocations in the groundfish and crab fisheries. As such, it is prohibited under national standard 5. The cap also would impact fishing entities outside of Alaska in an unfair and disproportionate way, thereby violating national standard 4 prohibiting discrimination between residents of different states. To the best of our knowledge, all of the six vessel owners who would be in excess of the five area license cap are from states other than Alaska. If promulgated, this proposal will violate the FCMA.

In addition, there is an inadequate record before the Council to support such a cap. Although the license limitation issue has been considered at great length by the Council, the record is notable for its lack of detailed consideration of the ownership cap issue. As a result, there is an insufficient basis upon which the Council can base a decision. Inadequate consideration has been given to the impact of such a cap on the environment, protected species, and socioeconomics. Moreover, the limited analysis which does exist argues against an ownership cap. The Council's overriding concern in considering the license limitation proposal is to maintain the health of the marine ecosystem to ensure the long-term conservation and abundance of groundfish and crab resources. The license limitation proposal is intended to accomplish this goal as an interim step to a market-based transferable quota system that will inhibit the existing unsustainable fishing practices that result from open and unlimited access. The license ownership cap proposed is fundamentally at odds with this concept, and the record does not provide the basis to impose a license ownership cap for the purpose of ensuring long-term ecosystem health and stability. It would be arbitrary and capricious for the Secretary to approve any such cap under the current record.

U.S. antitrust laws have undergone Congressional amendment and judicial interpretation for over 100 years. Antitrust is a mature, market-based system founded on economic efficiency rationales that will adequately address all issues of market consolidation in the North Pacific Fishery. There can be no reasonable assertion that a license limitation cap is justified by competitive analysis. To the contrary, a license cap is patently anti-competitive and is wholly inconsistent with the fundamental principles of economic efficiency that underlie the antitrust laws. Its effect would to erect barriers to new entry and market expansion through an impermissible restriction on alienation of licenses. It would potentially punish the most efficient lowest cost producer. The proposed license limitation scheme is a market allocation that would constitute a per se violation of the Sherman Act if agreed to by the fishing industry without government direction.

Finally, most industry members view this attempt at ownership restriction as meaningless because it would be very difficult and costly to enforce. Corporations can create subsidiaries to circumvent the ownership cap as explained in the Council staff memo of April 13, 1995 on page 4:

"Another issue to consider with regard to ownership caps is "who officially owns the vessel" ? For example, an owner of two vessels may have chosen to limit his liability exposure by forming two corporations (A and B), each owning one of the vessels. The vessel registration files would report Corporation A as the current owner of one vessel and Corporation B as the owner of another. The corporation owner(s) would not be identified in the data set, and the ownership cap would be circumvented."

There has also been no analysis of how 'persons' under a partnership arrangement would be affected nor how this might affect insurance pools where owners seek to limit their liability by owning a small percentage of several vessels.

I urge the Council to adopt the option of no caps and leave the decision of excessive quota shares to the Department of Justice.

Sincerely ,

David Benson
Director of Government Affairs
Tyson Seafood Group

August 10, 1995

Steven Pennoyer, Director
NMFS, Alaska Region
PO Box 21668
Juneau, Alaska 99802-1668

Re: LLP

Steve,

Your letter to Steve Hughes dated 7/28/95 stated the SOC would approve the LLP "if it is consistent with the ... goals" of the MFCMA. The purpose of this letter is to point out three major areas in which there are several serious inconsistencies with the goals and national standards of the MFCMA. While LLP clearly is not going to address the basic problem of a race for fish in an overcapitalized fishery, the specific LLP the council drafted has some serious deficiencies and inequities.

A LLP can't fix anything, however it can slow the rate at which things get worse if it is properly designed. Some of us perhaps expended too much effort arguing that LLP was the wrong path to be pursuing and a waste of staff resources. Maybe more attention should have been placed on how to at least make an LLP equitable if not effective. The failure to expend more effort shaping the LLP allowed the council to put together what has been dubbed a "license invitation" program.

There are 3 major areas in which i see serious flaws in the LLP package.

- I. License Designations
- II. Landings Requirements for Endorsement Qualification
- III. Community Development Quotas

I. License Designations

-Licenses and Endorsements will be designated as Catcher Vessel or Catcher Processor and with one of three Vessel Length Classes (<60, 60-124, 125+). In the Eastern Gulf (EY + SO) an additional designation allowing the use of legal fixed gear only will be assigned, regardless of the gear used to qualify for the endorsement

-CP/CV designations will be determined based on the activities of the vessel during 1/1/94 - 6/15/95 or the most recent year of participation during the Endorsement Qualifying Period (EQP).

Lack of Gear Endorsements

Given the huge number of license created based on very limited fixed gear landings, the failure to prohibit the use of trawl gear by those license recipients allows the potential for vast expansion of the trawl fleet. This is significant because trawling is both more capital intensive and

is associated with more rapid harvest rates.

CP/CV Endorsements

The creation of a prohibition on processing by catcher vessels does nothing to slow the pace of the fishery. In fact, catchers under 125 who also do processing on board generally do not process more than the 18 tons/day average limitation incorporated in the Inshore/Offshore rules. However, trawl catchers between 100 and 125 feet who do not process, commonly harvest 50 to 200 tons per fishing day. Obviously, processing onboard slows down the harvest rate.

What the ban on processing does do is restrict the markets available to harvesters. In the BSAI, there are no shorebased processors or motherships who have bought Atka Mackerel in the last year, nor have BSAI shoreside processors purchased significant quantities of flatfish from catchers. The catch history in these fisheries has shifted from catcher to factory trawlers due to the lack of access to markets by catchers, to preclude catchers from doing limited processing in the absence of other markets is clearly unfair.

The designation of a vessel as CV or CP based on the "most recent year" is also unfair. A number of catchers have done splitting and salting of cod on board for many years, but not necessarily in the most recent year. If there is such a designation a vessel should qualify based on any past processing.

The option allowing a CP to act as a CP or CV even if it has not previously functioned as a CV is one of many examples in this package of treating sectors differently without good cause. Again, a vessel's harvesting capacity actually increases when it is not acting as a processor as well as a catcher. Thus, to give a CP the option of functioning in CV mode allows for further expansion of effort particularly in the shoreside pollock fishery. This allows shoreside processors to continue their expansion of harvest capacity and vertical integration while prohibiting catchers from processing their own fish.

Your letter to Steve Hughes stated this restriction is consistent with the purpose of LLP to "control excess harvesting capacity and excess capital in the affected fisheries." The lack of a restriction on using more capital intensive, higher harvest capacity trawl gear belies this assertion relative to the harvest sector. It is also true that the LLP does not limit entry into the processing sector by additional motherships or shoreplants, nor does it limit additional capital investment by CPs. The addition of a Bader machine by a CP represents more additional processing capacity than the 18 MT/day average requested by CVs. (Note that this was never a request to be exempt from any of the reporting or other regulations which apply to designated CPs.) The lack of equity in this action is a clear violation of National Standard 4.

To prohibit small scale processing, which would slow harvest rates, in the name of controlling excess capital when there are no restrictions on expansion by the shore based processors or input of additional processing capital by factory trawlers, merely serves to freeze the harvesters who Americanized the flatfish and mackerel resources in the BSAI out of the market. To further assert that the ban on processing by harvesters "will not prevent persons participating in the LLP from obtaining licenses through transfer that would allow different behavior" ignores the reality that there are very few CP licenses that will be granted in the 75 to 125 foot range typical of the trawl catcher vessels who developed the BSAI flatfish fisheries. These vessels are left subject to the whims of a small number of shore based processors who have shown a limited interest in groundfish other than pollock and cod. (or rip-off artists like the Atlas who don't bother paying their catchers).

EY + SO Gear Restriction

Prohibiting vessels from continued use of the gear with which they qualified for a permit is not an action that reasonably belongs within a license limitation package. The vast majority of licenses created by the council action in EY + SO are based on fixed gear landings, yet as pointed out above, the council did not act to preclude fixed gear vessels from increasing their capacity by switching to trawl gear.

The arguments relating to fears of potential pre-emption of fixed gear fisheries do not hold water. The trawl fisheries have been successfully managed for the last two years, with the implementation of changes in Directed Fishing Standards and policy changes related to not setting TAC = ABC = Over-fishing. There has been no pre-emption of the fixed gear fishery. Most of the species taken with trawl gear are unavailable to fixed gear (deep flats, POP, pelagic rockfish, northern rockfish, etc.). Black cod, which is taken by both gear types, is covered by the amendment 14 allocation.

The council discussed compensation for the vessels which would be effected by this action, through a mechanism which would have impacted vessels in other areas. This was not adopted, however, if compensation is to be given it should be in the form of quota which could be harvested with fixed gear in EY + SO based on the portion of the sablefish TAC set allocated to trawlers under Amendment 14.

The council action also precluded the use of midwater trawl gear. Even if the arguments for a bottom trawl ban were valid, there was nothing in the analysis to indicate that those arguments would apply to midwater gear. The only public comment on midwater trawl was by Larry Cotter quoting a brief conversation he had with myself in the hall. He had asked me about my experience relative to fishing POP with MW gear and I had told him that it was possible but I had not used MW gear for POP in the Washington coast fishery because: 1. the 6000 lbs/month trip limits are so small that you catch them incidentally with bottom gear, and 2. that POP tend to dive and the risk of gear damage contacting hard bottom with a MW net makes it impractical.

ever. POP are much more abundant in SO + EY than on the Washington coast and in our limited experience with the Tracy Anne we have seen POP schools that could be fished with MW gear. We have also seen hydroacoustic evidence of other pelagic rockfish, including what is probably widow rockfish, which could be fished with MW gear. It should be noted that these are species which are not effectively harvested with fixed gear. It should also be noted that unlike the pollock fishery in the Bering sea, where MW gear is often fished in contact with the flat, soft, sand or mud bottom, that in pursuing pelagic rockfish species over hard, uneven, sloped terrain, it is suicidal to allow the gear to contact bottom. As such, any concerns about bottom impacts from MW trawl gear are not applicable in these fisheries.

Landings Requirements for Endorsement Qualification

Bering Sea/Aleutian Islands:

-An endorsement will be issued if a vessel made at least one landing in an area (BS or AI) during the endorsement period.

Gulf of Alaska:

-For all vessels - 60' in all endorsement areas, an endorsement

will be issued if the vessel made at least one landing in the area during the endorsement period.

-For the Central Gulf/West Yakutat and Southeast Outside endorsement areas, all vessels 60' but less than 125', which made at least one landing in an area in any two of the four endorsement calendar years (1992-June 15, 1995) OR four landings between 1/1/95 and 6/15/95 would receive an endorsement for the area. For all vessels 125', endorsements will be issued to vessels which made at least one landing in an area in any two of the four endorsement calendar years (1992-June 15, 1995).

-For the Western Gulf area catcher vessels which are 60' but less than 125 feet which made at least one landing between 1/1/92 and 6/15/95 will receive an endorsement. Catcher Processors which are >60' and Catcher Vessels which are 125' must have made at least one landing in the WG in any two of the four endorsement calendar years (1992-June 15, 1995) OR four landings between 1/1/95 and 6/15/95 would receive an endorsement for the area.

Lack of Consistency in Endorsement Requirements

One of the most inequitable aspects of the LLP is the lack of consistency in endorsement requirements which make it extremely difficult to maintain that the LLP complies with National Standard 4.

Why should a 70 foot catcher vessel who has fished every year between 1985 and 1991 plus all year in 1994 in the CGOA and who may have landed more than a million lbs/year, not qualify for a CGOA area endorsement, while another vessel of the same size which has only fished in 1992 in the WGOA and delivered only one fish would qualify for a WGOA endorsement?

Why should deliveries of a single fish in 1994 and 1995 result in a EY + SO endorsement, when 4 deliveries of 50,000 lbs per trip in 1994 do not?

Why does the same vessel need deliveries in two separate years to get a CGOA endorsement but only in one year to get a BSAI endorsement?

Why can 4 landings in 1995 be substituted for 1 landing in each of two years in GOA, but 20 landings in 1994 cannot?

Why can a vessel primarily based in Kodiak, which one time ventured into the BS get a BS endorsement, but a Duch Harbour based vessel which one time ventured into the CGOA doesn't get reciprocal rights?

The result of these inconsistencies is that the BSAI and WGOA have become designated dumping grounds for excess effort, where the most minimal speculative effort (1 fish in 1 year) results in an endorsement. At the same time, vessels which have been full time participants in the overall groundfish fisheries from before 1988 through the present, but who have moved from area to area because of limited market availability, and thus have only one year in the EGOA, one in the CGOA, and one in the WGOA, may not qualify for any GOA endorsements. This is a most blatant violation of the "fair and equitable" standard, as is each of the examples outlined above.

Need for Criteria that Measure Dependence

The MFCMA 303 b) 6 guidelines for limited access systems encourages councils to take into account dependence on the fishery. Other bodies have developed various criteria for judging dependence on fisheries in designing LL programs. The state of Alaska did so through a point system for salmon. The PFMC used a criterion which was a combination of poundage and numbers of landings. In a fishery like the North Pacific groundfish fishery, with its variety of gear types, areas, target species, and sizes of vessels developing appropriate criteria to measure dependency which do not place an unduly large administrative burden on the agency is obviously not an easy task. However, defaulting to a standard of a single landing of any size in one or two years for an area endorsement clearly does not reflect dependency, nor does it result in an equitable limitation of effort.

If equitable effort limitation on growth of capacity in the groundfish fishery is the goal of LLP, then it follows that those who have relied on the groundfish fishery in an area ought to have greater entitlement to an endorsement than those who have simply made a speculative landing. The appropriate practical measure of dependency is a minimum threshold of catch, applied on a vessel class basis by gear type and size.

The EARIR for the LLP included an appendix 1 by Joe Terry dated June 2nd, on page 84 & 85 figure 1 & 2. are a set of tables which would provide a good starting point for developing a set of threshold landing requirements. These tables show that between a 1/4 and 1/2 of the vessels in combination, in most of these classes, account for less than 1% of the landings by their class. This is particularly true of the longline catcher vessels <58' and pot catcher vessels between 59' and 124'. A threshold of 1000 lbs for the former and 5000 lbs for the latter would have resulted in half as many licenses in each class. Given that these licenses are not gear specific, this issuance of hundreds of licenses to vessels with no history of dependence on the groundfish fishery represents a huge potential for increased capacity.

The approval by the SOC of the PFMC LLP demonstrates that such thresholds are valid even at much higher levels (I believe that that plan required 100,000 lbs of groundfish other than hake or 15 landings in a 5 year window). Even with the thresholds and a landing window that stopped well before the date of final council action (perhaps 3 years before), the PFMC LLP did nothing to reduce effort. It was only because the factory trawl hake fleet received no licenses and were forced to buy up a significant percentage of the groundfish trawl licenses, that effort was actually reduced in their LLP.

Community Development Quotas

7.5% of all BSAI groundfish TACs not already covered by a CDQ program and a pro-rata share of PSC. PSC will be allocated "off the top" before the trawl/non-trawl split. The CDQ program will be patterned after current pollock CDQ program but will not contain a sunset provision.

Community Development Licenses.

Community Development Licenses will not be a part of the Community Development Program.

Lack of Analysis of CDQ Impacts

etter states that allocation "may impose hardship on one group if it is outweighed by the total benefits received by another group". However, the analysis package before the council contained nothing to substantiate the assertion that this is the case with groundfish and crab CDQs.

valid to maintain that because pollock CDQs may have met this test, that the additional CDQs under the LLP will also. There are significant contextual differences between Inshore/Offshore and LLP. Under I/O each processing sector received a definite allocation in return for supporting pollock CDQs, in fact the renewal of I/O seems to rest upon the benefit provided by the "stability". The shoreside sector received the additional benefit of assurance that its allocation would increase relative to status quo. The offshore sector received the intangible but real benefit in the form of damage control (e.g., Henry Mitchell's vote to limit the shoreside allocation to 35%). Under LLP no such benefits accrue, because no specific sectoral allocations occur, nor is the race for fish is not slowed in any way.

The shift of a fixed percentage of the TAC from one group to another might seem a "benefit neutral" event on its face. However, when that shift is from current participants to new entrants that is not the case. The transfer of 7.5% occurs at the margin, and as every vessel operator knows, it is the last dollar of the opening from which you get your profit. The CDQ under LLP removes the cream from the fishery. Current participants in an over-capitalized fishery are lucky if they make costs let alone a normal return on investment. Whatever benefits exist under the current level of capitalization (which LLP will allow to increase) will surely disappear with this transfer. The analysis failed to explore this issue.

The analysis also failed to address the impact of a proportionate allocation of PSCs to CDQ groups, in fact the option of doing so was not even included in the alternatives. Since PSCs are ultimately the constraint in a number of groundfish fisheries, this is more important than the groundfish portion of the CDQ allocation. It also differs from the I/O pollock CDQ plan. Under the pollock plan, CDQ groups share PSC caps in common with the overall fishery. The need for separate analysis has been demonstrated by the pollock precedent, where a separate plan amendment dealing with PSC allocation was submitted.

The impact of groundfish CDQs could have been substantially mitigated had CDQ groups been authorized to use some or all of their halibut CDQs as PSC through a Secretarialy approved bycatch plan. Previous analysis for the council has shown a cost/benefit ration of roughly 10 to 1 when halibut is used for bycatch rather than in a directed fishery. Under a Secretarialy approved plan CDQ groups should be able to retain halibut taken as bycatch thus increasing the benefit. In testimony to the AP, CDQ representatives stated that CDQ groups capture only about 20% of the gross revenue from CDQ halibut as benefits when they are taken by longliners. Allowing the use of CDQ halibut by CDQ groups in an approved plan would allow them to receive much greater

benefits and give them access to unharvested groundfish TACs even without a direct groundfish CDQ allocation. No analysis of this option was done in the LLP EARIR.

Equity

There is also an equity problem with the LLP CDQ allocation. In the halibut and sablefish ITQ/CDQ plan, CDQ groups received all their allocation in the BSAI area, however, vessels in the GOA shared the CDQ burden through a compensation mechanism which granted shares to effected BSAI vessels. There is no such compensation in the LLP plan. the full burden of CDQs is borne by BSAI fishers.

CDQ Licenses

Even if CDQ could be justified as increasing total net benefits (despite the lack of substantiating analysis), fairness would dictate CDQ groups should be required to utilize licensed vessels. As pointed out above, the impact of this allocation is likely to be widespread bankruptcies amongst the existing fleet. Given the degree of overcapitalization there is no shortage of available vessels which will have licenses. To require CDQ communities to use existing vessels would provide some compensation for the damage resulting from the transfer of 7.5% of the TACs to CDQ groups.

Allowing CDQ exempt vessels to participate in non-CDQ fisheries represents an unlimited source of further overcapitalization of the fishery. Whether or not the CDQ allocation is appropriate, it is clearly not equitable to deny area endorsements to current participants, while creating a loophole which could result in a new wave of capitalization.

Conclusion

It is hard not to be a bit cynical about a LLP which does little or nothing to deal with the pressing problems of an over-capitalized derby fishery, but which serves as the Christmas tree for the constituents of individual council members to attach their goodies.

- PSPA gets to hobble the ability of catchers to market there own fish.
- ALFA gets the ban on trawling that didn't pass muster as a stand alone plan amendment.
- CDQ groups get to enter the fishery with all the benefits that go with quota based non-derby management.
- The State of Alaska gets to take credit for a LLP that doesn't limit their <60' constituency, while succesfully gerrymandering larger vessels with real catch history our of the central and eastern gulf.
- (oh, and Wally gets a consolation prize. we will analyze a pollock only ITQ for the BSAI - someday)

If the agency doesn't call the council on the carpet for shenanigans like this, it's hard to imagine the agency or the Standards embodied in the MFCMA retaining much credibility in the future.

Sincerely,

dave fraser
FV Muir Milach
PO Box 771



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

September 22, 1995

Richard B. Lauber, Chairman
North Pacific Fishery
Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Rick,

We have initiated drafting regulations that would implement the License Limitation Program (LLP), which was approved by the North Pacific Fishery Management Council (Council) at its June 1995 meeting. In reviewing the elements of the LLP, we have determined that certain issues need to be clarified to facilitate our drafting project. Clarification is necessary to ensure that the Council's intent for this proposal is accurately reflected in the drafting of implementing regulations. Discussion of the following issues is based on Attachment 1 of the Council's June 28, 1995, newsletter.

1. QUALIFICATION UNDER THE LLP

If implemented, the LLP would not limit access to the groundfish and crab resources in waters of the State of Alaska (State waters). A vessel that fishes exclusively in State waters would qualify for a license under the LLP if it satisfied the minimum landing requirements for a general license and area endorsement. Hence, a vessel that had no historical participation in the affected fisheries in the Federal exclusive economic zone (EEZ) would qualify under the proposed LLP for a limited access fishing privilege in the EEZ. The basis for this qualification would be the vessel's historical participation in the affected fisheries during the qualifying periods in State waters. Another vessel with no historical participation in the affected fisheries in either the State waters or the EEZ would not initially qualify for a license under the LLP.

We see a potential difficulty which may be resolved by further clarification of the Council's intent. This difficulty is defending the provision against a potential claim that we arbitrarily granted a LLP license to one vessel with no historical participation in the affected fisheries in the EEZ but not another vessel with a similar lack of catch history in the



EEZ or with a catch history in the EEZ insufficient to qualify for an endorsement.

The recently approved vessel moratorium also does not distinguish between vessels that met the qualifying landing requirement by harvesting fish from the EEZ or from State waters. However, the moratorium was designed as a temporary measure and not intended to totally resolve the overcapitalization problems in the fisheries.

One potential reason why a distinction has not been made between landings in State waters and landings in the EEZ is the lack of specificity in available data. Statistical area locations and reporting methods have contributed to this lack of specificity. The same data was used for the moratorium and the LLP. One possible method that can be used to distinguish participation in State waters and the EEZ would be to compare Federal fisheries permit data with landing data. It could be presumed that any reported landing from a vessel that also had a Federal fisheries permit made the catch, or could have made the catch, of those fish in the EEZ. In this event, a vessel would meet the LLP licensing requirements if it also had a Federal fisheries permit at the time of its qualifying landings. A comparison with Federal fisheries permit data would only work for the groundfish portion of the LLP because there was no requirement to hold a Federal fisheries permit to legally harvest crab in the EEZ. If the Council does not intend to distinguish between vessels that fished exclusively in State waters and vessels that fished in the EEZ, however, then additional clarification should be provided to resolve the difficulty noted above.

2. LICENSE RECIPIENTS UNDER THE LLP

Under the moratorium, the Council explicitly recognized the transfer of moratorium qualification (commonly referred to as "fishing history" or "fishing rights") before implementation of the moratorium. A moratorium permit will be issued to the owner of moratorium qualification. Further, moratorium qualification is presumed to belong to the current owner of a vessel that made a legal landing of moratorium species from January 1, 1988, through February 9, 1992, unless otherwise specified in a purchase agreement or contract. Hence, the issuance of a moratorium permit will depend on who holds the moratorium qualification at the time of the permit application. We have assumed that the Council intended to also recognize the transfer of fishing history or fishing rights under the LLP. However, the language of that element of the LLP indicates that a license would be issued to the owner of a qualified vessel on 6/17/95 (the date of final Council action).

If the Council intends to limit eligibility only to persons who owned a qualified vessel on 6/17/95, then we would not be able to

issue a LLP license to a person who claimed eligibility because he or she owned moratorium qualification on or after that date. Although the Council used a similar approach in the Pacific halibut and sablefish IFQ program (i.e., eligibility based on ownership at a time prior to application), the LLP presumably is intended to follow the moratorium. In this case, the Council should clearly indicate (1) why eligibility for a LLP license is not limited to the possession of moratorium qualification and (2) why ownership of a vessel (or fishing history) on 6/17/95, rather than the date of application, is important to the Council's purpose.

Specifically, the Council has requested a legal opinion from NOAA General Counsel regarding whether the Secretary could exclude from LLP eligibility former U.S. vessels that have been re-flagged under Russian ownership. A memorandum to the Council from the Alaska Crab Coalition directly ties the Council's adoption of the 6/17/95 eligibility date with this proposal. Before a legal opinion can be drafted, General Counsel needs to know if this was in fact the Council's intent in adopting that date.

3. LANDING REQUIREMENTS FOR ENDORSEMENT QUALIFICATIONS

The qualifications for some endorsement areas and vessel classes are more stringent than other endorsement areas and vessel classes. For example, a 60' vessel would have to had made one landing in any 2 of the 4 endorsement years for a Central Gulf of Alaska (GOA) endorsement but the same vessel would have to had made only one landing in the 4 endorsement years for a Western GOA, a Bering Sea, or an Aleutian Islands endorsement. Different qualifications for the endorsement areas of the GOA and the BSAI will need justification based on the analysis of the LLP. The Council should clarify its intent and purpose of prescribing different qualifications for different areas and vessel classes.

Also, we note that the general qualifying period (GQP) and the endorsement qualifying periods (EQP) overlap during the period January 1, 1992, through June 27, 1992. This overlap of nearly six months has the potential for anomalous results in two different ways. First, any vessel that made a landing of groundfish or BSAI crab covered by the respective FMPs during the overlap period (overlap vessel) would be eligible for a LLP license with less restrictive requirements than a vessel that made landings outside of that period. An overlap vessel would qualify for a LLP license with one landing, but other vessels would be required to demonstrate two or more landings to qualify for a LLP license. The Council should clarify its purpose in providing this benefit to overlap vessels but not to others.

Second, an overlap vessel may be precluded from receiving a LLP license endorsement in an area in which it had substantial

landings during the EQP. For example, if a vessel made a single landing in the Bering Sea during the overlap period but most of its catch history was in the GOA during the EQP, then the vessel would qualify only for a license to fish in the Bering Sea. This is because the vessel had no landings in the GOA during the EQP. However, if the single landing in the Bering Sea had occurred before the overlap period, then the vessel would be eligible for a LLP license in the GOA because of the "empty umbrella" provision. This anomaly would be further exacerbated in cases where a vessel crossed over to groundfish from crab. If the vessel in our example had made a single landing of crab from the Bering Sea during the overlap period and landed groundfish in the GOA during the EQP, then it could qualify for a general license and endorsements in all areas. Is this the Council's intended effect, and if so, why?

4. VESSEL REPLACEMENTS AND UPGRADES

Replacing or upgrading a vessel under the Moratorium is possible so that it would no longer qualify in the appropriate vessel category under the Council's LLP proposal because its length would exceed the maximum allowed in the category. Hence, a person could receive a LLP license (and appurtenant endorsements) that could not be used on the replaced or upgraded vessel because it would exceed the vessel class for which the vessel qualified under the proposed LLP. For example, a vessel with an original qualifying length under the moratorium of 58 feet LOA could be replaced or upgraded to 70 feet LOA according to the moratorium's 20 percent rule. If the vessel owner exercised this option under the moratorium, the vessel would not be eligible to use its LLP license because the license and the vessel are in different vessel classes. Furthermore, this license could not be used to harvest LLP species until a vessel in the appropriate vessel class was specified on the license because a license must have the name of the license holder and the vessel on which the license will be fished to be eligible for fishing. We have assumed that changing who holds a LLP license or the vessel on which it would be fished would require transfer approval by NMFS. Is this explanation and assumption consistent with the Council's intent for this aspect of the LLP proposal?

5. COMMUNITY DEVELOPMENT QUOTAS

Clarification is needed on the impact of CDQ allocations. A specified percentage (7.5%) of all BSAI groundfish TACs not already covered by a CDQ program, and a pro-rata share of the PSC will be allocated to CDQ communities. The Council's intent regarding the closure of CDQ fisheries, however, is not clear. The CDQ allocations of some species will be harvested more quickly than other species. Although we would close a CDQ fishery when the overall allocation is reached, what is not clear is whether the Council intends for us to preclude any CDQ group

from fishing other species when its allocation of one species is totally harvested and it is probable that the species totally harvested will be caught while prosecuting a fishery for another species. Some of the specifics can be incorporated into the individual Community Development Plans, however, the LLP proposal should clearly indicate how CDQ allocations are intended to be managed.

Also, the CDQ portion of the LLP proposal includes all BSAI groundfish "not already covered by a CDQ program." Currently, sablefish CDQ is covered by the IFQ Program and pollock CDQ is covered by the inshore/offshore allocation. Although the IFQ Program, and the included sablefish CDQ portion, is established in perpetuity, the pollock CDQ program is scheduled to expire with the inshore/offshore allocation. We assume that the Council intended that pollock CDQ would be incorporated in the LLP, but we request that the Council affirm this intent for the record.

6. HARDSHIP PROVISION

Provision 8 (under "other provisions") would allow vessels that were lost, damaged, or otherwise out of the fishery due to factors beyond the control of the owner and which were replaced or otherwise re-entered into the fisheries in accordance with the moratorium rules to qualify for a general license and an area endorsement with only one landing prior to 6/17/95. This provision would have two effects. First, it relaxes the multiple landings requirements for an area endorsement in some parts of the GOA. A vessel may have re-entered a fishery with sufficient time to meet the standard landings requirements for endorsements; however, because the vessel was lost, damaged, or otherwise out of the fishery it would only need to have a single landing to qualify. This may not be a significant issue in the BSAI where only one landing during the endorsement period is necessary for an endorsement under the standard qualifications procedure. The GOA, however, has different landing requirements. For example, an 80' moratorium qualified vessel that was lost to the fishery in 1989 and replaced in accordance with the moratorium rules could qualify for a Central GOA endorsement by making a single landing in that area prior to 6/17/95, even if the lost vessel had been replaced immediately and had been fishing in the Bering Sea for the entire intervening period (1989 through 1994).

Second, this provision does not allow licensing of a vessel under the LLP that replaces a lost or destroyed vessel under the moratorium. The Council provided an owner of a vessel with moratorium qualification that was lost or destroyed after January 1, 1989, the opportunity to replace the vessel during the first two years of the moratorium (i.e. 1996 through 1997). If the owner of such a vessel exercises this option, the vessel would qualify for a moratorium permit in 1996 and 1997, however, it would not qualify for a LLP license, say in 1998, if it did not

make a landing during the EQP. If these two effects were intended by the Council, it should clarify why Provision 8 is designed to give an additional benefit to certain vessels that could have qualified anyway while withholding a benefit from other vessels that are provided access to the fisheries under the moratorium.

We would appreciate the Council reviewing and clarifying these issues so that we can continue drafting the proposed implementing regulations for the Council's LLP proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve".

Steven Pennoyer
Director, Alaska Region

Transcription
NPFMC Discussion on License Limitation
October 1, 1995

[NOTE: To save time and space, the formalities of seeking recognition of the Chair and being recognized by the Chair have been omitted.]

Tape 52

David Benton: On this first item Mr. Chairman, I'd offer...I would move that we adopt option C that the staff have identified; current owner is defined as date of final Council action and transfers of rights are recognized. If I have a second I'll speak to it.

Linda Behnken: Second.

Richard Lauber (Chair): It's been moved and seconded. Do you care to speak additionally to your motion?

Benton: Yes, thank you Mr. Chairman. Mr. Chairman, I think that this issue, unfortunately, in Juneau did get sort of confused. It got tied up with other issues regarding foreign ownership that I think, upon reflection, really was not appropriate. Certainly it confused the overall intent of the Council with regard to the implementation dates of this license program. In June Mr. Chairman, when we were debating the provision regarding current owner, that discussion did get into aspects of the foreign ownership issue. I was the individual who was most interested and concerned about foreign ownership, and at that time I had even offered a motion to amend the language in current owner to include language that would be something along the lines of; to the maximum extent permitted by law, foreign reflagged vessels at the time of this action wouldn't be allowed to come in and participate in the fisheries. Captain Anderson rightly, I believe, pointed out that that may be inconsistent with documentation laws. We had quite a bit of discussion about that. That language was dropped, and in the course of that, the date, specific date, with regard to current owners and whatnot was also dropped. And it was dropped at the suggestion of NOAA General Counsel because of our discussion on the foreign ownership issue, and whether or not we could get a clear answer from NOAA General Counsel on foreign ownership. I see these as two very separate issues Mr. Chairman. The first and foremost issue really is how the Council is going set the rules for the fleet as a whole with regard to this license program. And throughout the debate on CRP, and in fact on many other issues the Council has dealt with over the course of the last several years, the moratorium, this license program, IFQs for halibut and sablefish, the Council has chosen specific dates and used those specific dates to draw, the term I've been using is draw a bright line, and say this is the date that defines the rules and this is the date that for the regulatory purposes of the agency, we're going to use to make a cutoff or a point of reference, and then the rules will apply in certain ways from that point of reference. Under CRP over the last several years, in fact while we were doing IFQs for all groundfish and crab species, and when we were then looking subsequently at the license program, we have been using the date of final Council action as being the preferred alternative. We had other dates in there for analytical purposes, we discussed those other dates, we debated them, they were analyzed as options. But throughout this discussion, the date of final Council action has been something that was very important to the Council, and also in the end very important to the industry. And we heard yesterday the necessity for choosing a date that has to do with when you decide who is getting these licenses so that subsequent transactions and the rules regarding those subsequent transactions are clear, because of the need to maintain stability and to provide some measure of certainty for the industry. In fact in 1993, December 1st, there's a letter to us from the Coalition for Stability in Marine Financing. Now they sent us a letter very recently that suggests using the date of application. But in December 1st of 1993, they were very firm and provided us with quite an analysis of why we should use the date of final Council action. And their view was that this was necessary to ensure stability in financing, to ensure that the status of licenses and fishing rights were clear and unambiguous because the financing industry and the seafood industry as a whole needed to have that

kind of stability. In fact, I'll quote them, "It is the originally proposed implementation date and is the sound and logical choice," and here they're talking about date of final Council action as opposed to some date in the future. They did not support using a prospective date at all. They at that time supported using date of final Council action. Their conclusion in this seven page letter, signed by Mr. Meyer, is that the Council should select Option B, defining current ownership to be the current...to be current as of the date of final Council action on the groundfish and crab, this was the IFQ plan. This is a sound and rational choice, and the one that is fair to all concerned. Yesterday we heard very similar testimony from members of the industry on this issue. I think it's important that we, the Council, look at these things not with an eye towards who benefits or loses, necessarily, in terms of individuals, but how the rules are set for the fleet and the industry as a whole. So that's why I made my motion, Mr. Chairman. I think it is consistent with our debate in June, in fact, our debate throughout this process over two years. It's certainly consistent with the majority of the testimony that we have gotten over the course of time. And I think that if we do this in this manner we will have kept our commitments regarding transfers of rights. We will have set clear and very definitive rules people can rely on and we can avoid the kinds of instability in the industry that people are concerned about, and in fact, some of the complicating problems that we saw with things like the moratorium and the IFQ program for halibut and sablefish where there were some ambiguities about who had how much quota, and it resulted, in fact, in the Agency having to put special clauses in the application forms in order to deal with some of those problems. Thank you Mr. Chairman.

Steve Pennoyer: Mr. Chairman, so I understand the definition here, but when you say transfer rights are recognized...so transfer rights that occurred after June of 1992 would be recognized too? So the current owner as of that date wouldn't get whatever the license is? The person holding the transfer right after that...I'm trying to determine which is the primary qualification.

Benton: The owner of record as of 6/17/94 gets that...1995, excuse me wrong year...would get that, would be the recipient of that license, unless somebody...they had entered into some kind of contractual arrangement, sold those rights, transferred those rights to somebody else, and that second individual had them. Similarly, we would be honoring transfers of rights that had occurred previously. Now that could lead to one specific instance that staff have pointed out to us, that potentially could cause some difficulties. And that is an instance where a particular vessel, and I think this is most germane probably to the vessels under 60 feet, could wind up, you'd have confusion over who gets the rights, or there might even be two individuals that get licenses based on one vessel. And I'd like to speak to that maybe in a minute because I have a suggestion in that regard, but I thought we'd talk about this one first.

Pennoyer: Clearly then the transfer...well if you didn't qualify, you weren't a current owner by June...or had already transferred to you so you're a current owner in June of 1995, you couldn't transfer subsequently, obviously, you wouldn't have anything to transfer. But the transfer is the dominant thing if you qualify otherwise O.K.

Benton: And the important thing here is that anybody that qualifies will get their license as of that date, and it doesn't preclude individuals from transferring their rights or receiving rights subsequent to that date.

Pennoyer: And judgement on how that is judged to be a legitimate transfer is up to us then basically?

Benton: That's true.

Pennoyer: Then we'd have to set standards of some kind.

Walter Pereyra: Now so I'm perfectly clear on this then, so that would mean that the issuance of the license turns on the qualifications of the person to whom the rights have been transferred to, so that if in fact prior to the 17th of June the rights were transferred to a foreign entity, and that entity was in possession of those rights on the 17th

of June, they would not get a license. Is that correct? But that if the rights have been transferred to a person who was qualified to be the owner of a license, and that person, you know, was the person that had those rights on the 17th of June, then they would get the license. Is that correct?

Benton: If I followed what you were saying, I believe that's correct.

Lauber: Any further discussion?

Marcus Hartley: Mr. Chairman, the Council might want to make a statement regarding transfers of vessels where rights are not mentioned at all, which have occurred or will occur in the future. We talk about these unspecified transfers, in that case there is an assumption that, you know in the industry I think, that the fishing history and rights traditionally have gone to the new owner. However, under this situation, it would appear that the rights to receive a license in that case would stay with the seller. And so the Council may wish to make that very clear, if that's their intent, or may wish to say otherwise.

Lauber: You'd have three situations that you could have. A situation where the rights were transferred and they...the vessel is sold and the agreement transfers the rights with the vessel. You could have the situation where the vessel is sold and the agreement specifically reserves the rights to the seller. And then you have the situation I think you're talking about, where there's no mention made of the rights. Is that correct?

Hartley: Right, that's correct.

Lauber: What happens one way or the other.

Clem Tillion: Mr. Chairman, I would say that we should make it very plain that in the absence of a written agreement otherwise, the rights transfer with the purchase of the vessel. Because you have lots of agreements among fishermen, and then you just transfer the vessel and it goes with it. And we should have made that clear with the ITQ too. It goes with the vessel unless a written agreement stating otherwise is recorded.

Behnken: I think that that's exactly what Mr. Benton was getting at. That it will go to the person who owned that vessel on June 17th, unless there has been a contractual agreement made, and then that's somehow presented to NMFS. I think it's a pretty hard, bright line at this point.

Hartley: Or unless the vessel sells subsequently. Is that correct?

Behnken: Right. And if it sells subsequently, it would be the same thing. It would go to that person on the 17th, unless there was a contractual agreement.

Clem Tillion: No, no, no.

Hartley: No, that's the option...[Several people talking at once.]

Tillion: No, it goes...you're missing the point I had. Unless you specifically reserve your right to yourself when you sell the vessel, the rights go with that vessel. So that you don't catch somebody who has bought a vessel, and then the other fellow comes out of the woodwork a year or so later and claims all the fishing rights. In other words, unless those fishing rights were held back by a contractual arrangement, all fishing rights accompany the vessel.

Pereyra: Mr. Chairman, I think we want to make certain here that we don't fall into a trap. And that is to having the rights with the vessel. The rights go to the owner; that's who gets the license. And in the case where it's

reserved, it's reserved to the person to whom it's reserved. And so, the license is always separable from the vessel.

Benton: That's correct.

Tillion: Yes. But you'd have to have a written agreement to do so.

Pereyra: But in the case where it hasn't been reserved, then obviously it goes with the owner.

Tillion: The new owner of the vessel.

Captain Anderson: I just want to clarify a couple of points, because it was my motion in June, I know, that we're now discussing. And there was no date specifically mentioned in June. One of the reasons was because of these transfer things we're talking about and the uncertainties associated with it. And the second one was a consistency with the moratorium which would have been during an application period. But now that the transfer provisions are being discussed, I think it's very appropriate to be even looking at a specific date. Transfer provisions, just so it's clear in my mind, vessels which were reflagged Russian, my understanding is if the previous U.S. owner retained those rights under the catch history of the vessel, then even if a date specific is chosen in June, then he would still retain that eligibility to receive a license. And I see no inconsistencies at all with the documentation laws, because that individual or U.S. person eligible to document a vessel would then in turn be able to repurchase that vessel if they so desired, and actually bring it back into the U.S. fishery because it is eligible to be redocumented U.S., get a fishery endorsement, the person has a license in hand that he retained on that sale, and he can go on in the fishery. The only...the second thing that could happen is, if the person did not retain those rights, he specifically sold those rights, then that's I think what you described Marcus, is the license that disappears.

Hartley: Yes.

Anderson: It goes away because the current owner who then received those rights is not a person eligible to document, and therefore that license is off dead forever.

Tillion: Yes.

Benton: That is correct. And in that instance...

Lauber: My concern...I don't have any problem with saying and agreeing that the, where there is no statement or contract, that the rights would go with the vessel, unless reserved. But I would also feel more comfortable if we didn't just make it mandatory...something to the effect that where the rights are not specifically reserved to the seller, they would be transferred with the vessel unless there is evidence to the contrary. And by that I mean, in the normal course of business, maybe some fishermen don't realize, they don't intend to transfer their rights, it's understood but there was no written agreement. Maybe the person has gone on and purchased a different better vessel or something that he intends to fish on and is geared up for it and so forth, so it's obvious he intends to transfer them. The other guy has taken the vessel, moved it out of the state, or is using it to haul garbage or something, and he ends up with a so-called windfall on that vessel that he never intended to. All I'm saying is, there could be other ways of proving that you reserve the rights other than just a written contract. And I just don't want us to foreclose somebody from showing that if they can show it. And I don't think NMFS has to necessarily be involved in that. They could just withhold those rights until that matter is resolved in court or by the parties, or something of that sort. You look puzzled Counselor, do you care to speak?

Pennoyer: Well, Mr. Chairman, I guess I'm a little puzzled as to how we're going to enforce that or make that decision.

Lauber: I'm not...and I think you would probably do it normally, if you were going to transfer the rights to the new owner of the vessel and it was contested, you probably wouldn't transfer them until it was resolved, would you. I just didn't want us to be saying that you had to transfer those with the vessel unless there was a written contract to the contrary.

Pennoyer: So we would issue it to neither until it was settled in court between them.

Lauber: Yes. And until the matter is resolved.

Pennoyer: It's sort of the same thing we did under the IFQ program, and...

Lauber: I'm not saying that you should...I'm not saying that National Marine Fisheries Service should resolve it, but that you just wouldn't automatically transfer it with the vessel because the guy can't come in and show you a written contract that says that he has reserved those rights.

Pennoyer: So, Mr. Chairman, so in every case where a vessel was sold, we would not issue the license until the two parties resolved in court whether the rights went with it.

Lauber: And I think that you're probably going to end up doing that, maybe even where there's a writing, a written contract.

Tillion: If there's an argument.

Lauber: If there's an argument over it, you're probably going to reserve those rights...transferring those rights, until that issue is resolved anyway. It sounds to me very likely that you would do that.

Pereyra: Mr. Chairman, one thing that I think we want to be real careful about here is that we don't automatically throw all of the security arrangements in marine financing into some sort of a tail spin here. Because I think that in the case of where vessels are securing some loans with a first preferred ship mortgage, if all of a sudden now we're saying that there's not going to be a license issued for a vessel until such time as the buyer and the seller work out the details, I think you've immediately put the person that has the loan, in this case a bank usually, in somewhat of a very difficult situation because they're going to be potentially held up over this situation because the vessel itself, unless it has the right to fish in the fisheries, loses a tremendous amount of its value for what it was originally secured for. Now I don't want to go out and do the bankers work for them, but I just think that this could be a very difficult situation. And it might make it difficult for those people that are presently operators. They may find all of a sudden that there's going to be a lot of interest on the part of banks to get personal guarantees, you know, get your dog and your first born child to be security on your vessel, so I think we want to be very careful about this.

Tillion: Mr. Chairman, this is why I brought it up. We had a couple of cases that I know about where the person bought a vessel under the halibut ITQ, on the agreement, the verbal agreement, that he was going to get the quota, but that it was only a verbal agreement and the retired owner came back, claimed and won the quota, leaving the vessel with no way to fish unless they wanted to go a million some dollars in debt to buy the fishing rights from somebody who was retired in Hawaii. And I don't want to see that happen again. We did it this last time by not having some...you want to telegraph it way early that if you buy a boat, you better make sure that you have secured the rights with that vessel, and that some ghost doesn't come out of the closet when the paper work is all done, and say now I never intended to transfer the rights, I just sold the vessel.

Lauber: Well, my suggestion would not be a problem in that kind of a case, because the guy that retired and went to Hawaii obviously is not showing any evidence that he intended to reserve any rights. And in this case, I'm saying the rights would, in that case, transfer with the vessel. I'm just saying that I don't think we should be pre-deciding cases where there may be a way that in court a person could show that they in fact had reserved those rights, even though there was no written agreement. It's not a big deal, but...

Benton: No, Mr. Chairman, you're quite correct. And in fact, all of this discussion to me argues for us avoiding a repeat of the moratorium situation, because the longer we wait, the more likely we are to have a situation where it's more ambiguous about what the rules are, and things can happen that are not necessarily what we have in mind. And I think that what this all argues about is that these rules get enacted into regulation as fast as they can so that there is not that ambiguity. And I also agree, Mr. Chairman, with your suggestion that in that instance where two parties have some kind of a previous, like prior to 6/17/95, they have an arrangement that is ambiguous in this regard, that it would be National Marine Fisheries Service holding the license until that is resolved between the parties. It's not National Marine Fisheries Service's problem; they shouldn't be in the business of trying to adjudicate these things at all. And I think that's similar to what you did in the halibut and sablefish program, Mr. Pennoyer, and I think...I mean I would fully expect you to figure out some rules that are similar to that and how to handle these cases. I don't imagine we're going to have that many of them, but there will be some.

Lauber: Right. And by the way, Dr. Pereyra's problem, while potentially very real, I think that unless some of these lending institutions are operating a hell of a lot differently than any I've ever dealt with, I'm sure they have prepared for this and the writings are very clear and that they will be protected. So, I'm not concerned really...I don't think the problem is with financing institutions or they're going to have a problem with this. We're really probably talking about relatively small vessels, two guys like Clem said, that have an agreement and somebody comes in and takes advantage of the fact.

Benton: Mr. Chairman, these would be...the way I interpret this, these would be instances that are occurring for transactions that occurred prior to 6/17/95. After 6/17/95 the rules are very clear, and should be very clear. And those rules are, if you don't have a contract, you don't have the right. The guy that added...6/17/95.

Lauber: That's right.

Tillion: Very good.

Hartley: Mr. Chairman, I'm afraid that I'm unclear now. After 6/17, if there's a transaction, I sell my boat to Chris and no mention of the license or rights or history is made in that purchase agreement, Chris is now the owner of the vessel. I thought the motion that Clem wanted was that that license now would go to Chris.

Benton: No, you're wrong Marcus.

Hartley: O.K. I thought that's what...[Several people talking at once.]

Benton: What we're talking about, Mr. Chairman, if I might. What we're talking about is, we are setting a clear, bright line. And what we're saying is that for those transactions that occurred prior to that clear, bright line, that where there is this ambiguity the parties have to work that out. And Mr. Tillion's suggestion I think is correct, which is that barring an agreement, it goes with whoever owns the boat most recently. That's really what you were saying.

Tillion: That's basically what I'm after.

Benton: Now, after 6/17/95, the rules are very clear. Whoever was the owner on 6/17/95 is going to get that license. And so in your instance, because it's an unspecified transaction, the owner happens to be this individual, 6/17/95, that you're concerned about, which would happen to be Chris. It's a done deal. After 6/17/95 though, it's everybody should be on notice that they have to make sure that when they buy a vessel, that they get the full suite of rights that go along with that vessel. It's their obligation.

Hartley: O.K. If that's...we can go with that, that's no problem...That didn't sound like what Clem wanted..

Pereyra: What happens in the situation where prior to this date, this bright line, a bank has a loan that's been placed on a vessel, and the vessel is securing the loan, and then after the 17th there's a foreclosure for whatever reason. And the bank then acquires a piece of steel and the other fellow's got the license.

Benton: I think Mr. Pereyra brings up a very interesting point, but I recall that, and I think this was in 1992, possibly 1993, but I believe it was 1992, it may have been 1993, that most of the banks were busily scurrying around ensuring that the loans were secured against the fishing rights of the vessel.

Pereyra: True, true.

Benton: So I don't think we have a problem.

Pereyra: But there could be the case where that didn't occur. For example...

Benton: There could also be a case, Mr. Chairman, where somebody who is not qualified to purchase a vessel because they do not meet the qualifications, become a naturalized citizen sometime between now and when these regulations go into place, and what do you do with them? There's always an exception that proves the rule, Wally, but I think that generally speaking, this thing's been going on long enough that the marine financing industry understands that whatever loans they're securing have to be secured with the full suite of rights that go along with the vessel if they're securing it with the vessel. And I think that they've taken care of that by and large. If they haven't, then they haven't been paying attention.

Tillion: Does Marcus have it down?

Hartley: After 6/17, unspecified transfers stay with the seller.

Tillion: Yes. But before that...

Hartley: Before that go to the buyer.

Tillion: O.K.

Pereyra: No, before that they go to who's ever...before that it goes to whomever is holding it, has reserved that right, either the buyer or the seller.

Hartley: The unspecified transfers.

Tillion: The unspecified goes with the vessel.

Kevin O'Leary: Yeah, that's not what Marcus said.

Tillion: No, no, but only prior to the date of action. In June we gave notice, Mr. O'Leary, but prior to that, there were people that bought vessels expecting that they had the right to fish them, and then we took a subsequent action. To them, unless there was a written agreement to the otherwise, the rights to fish go with the vessel, to the new person that purchased.

O'Leary: To the new buyer, after 6/17.

Behnken: Only if it's written.

Tillion: No, before 6/17 they do, in other words people have already done it. Then on 6/17 we gave notice that from now on, when you bought or sold a vessel, you better make sure that the rights are part of the agreement. And we're giving notice to people that from now on, that's what they have to do.

O'Leary: Alright, I understand.

Clarence Pautzke: But then it goes to who had it on 6/17.

Pereyra: If it turns out that something like that happened, then you go and you sue your attorney for malpractice.

Behnken: I think that's clear. And then the one situation that seems to me is left, is this situation where X and Y both qualified, the seller and the buyer. And the reason being, that the boat qualified under our rules and then it was sold to someone who, an under 60 foot [change to tape 53] sort of qualified again because it was fishing pots. And in that situation, my understanding is, we would require those parties to work it out and to come to NMFS.

Tillion: They don't get two licenses.

Behnken: They don't get two licenses and no license is issued until they have worked it out and come to NMFS with an agreement. Is that the intent of the motion?

Lauber: Mr. Benton, you were going to speak to that, maybe later.

Benton: Yeah, that's true. That was the intent of my motion. I think from the discussion that has gone on, especially the discussion in June at Dutch Harbor...

Lauber: Would this be better handled after we take care of this motion?

Benton: Yeah, we can do that.

Behnken: I thought it was part of this.

Lauber: O.K. Why don't we do that. We'll take care of the X and Y after we dispose of this motion. Is there any further discussion on Mr. Benton's motion, which was option C, current owner, 6/17/95, and recognized transfer rights. Is there any further discussion? Ready for the question? Any objection to the motion? Hearing none, it passes. O.K. Now, which one of you are going to speak to this X and Y situation?

Benton: I can take the X and Y issue Mr. Chairman. Mr. Chairman, this is sort of...I guess I'll put this as a motion, but it's a sense of the Council is the way I'd look at it. And the motion would be, that it is the sense of the Council that the overall intent here is, it's one vessel, one license. We're not intending for one vessel to wind up generating two or more licenses. If I have a second to that I'll speak to it.

O'Leary: I'll second it.
Behnken: I'll second it.

Benton: Mr. Chairman, throughout the discussion on the license limitation program, I think it's very clear, it has been for several meetings, that what the intent of the Council is, is that we honor the moratorium as much as possible, but that most importantly, that what we do is that we have a way to reduce the number of vessels in the fishery, and that we provide stability. And part of that stability is what I just...is this motion, and that is that it's one vessel and one license. Now staff have pointed out an instance where this may not be the case. And again, I think that we're going to have to rely on National Marine Fisheries Service to come up with some standards on how to judge these instances. But in this instance, I think that, again, this is a matter where the two parties involved have a problem. I think this is going to be a rare instance, in terms of the instance that staff had provided for us, but I believe that that's a domestic dispute between the two parties that needs to be resolved, and that again, National Marine Fisheries Service would just hold the license until that's resolved and then once it is, that they would issue the license. And I would point out that during the period when...that this is really only an issue that would occur for transactions prior to 6/17/95, and that during the period that the regulations are put in place, parties that are in this situation I think are going to know about it pretty quickly. They will have a period of time to try and reach some resolution before this becomes an issue for them in terms of a practical sense of operating their vessel. At least that would be my hope. I guess that again speaks to speedy adoption of this, and work that I think the Council and the Agency is going to have to do to ensure that those rules are clear and out there for everybody to understand. Thank you.

Lauber: Is there any further discussion on the motion?

Pennoyer: Mr. Chairman, I think I'd like Marcus or John [Lepore-NMFS] to comment a little bit, because I think there still is a bit of a problem.

Hartley: Mr. Chairman, I feel like I'm going to be the bearer of bad news here. My understanding, and I think National Marine Fisheries Service's understanding of a retained rights situation, where I've maybe transferred my vessel but have retained the fishing history and the fishing rights of that vessel, that in effect, we have created a brand new vessel; the vessel that is now in the hands of buyer, that has no catch history, and is therefore a brand new vessel in terms of our fishery. Once I've sold that vessel, I have no authority or right to say to the buyer what he may, or she may, or not do. If that buyer goes out and participates in the fishery and qualifies for a license, for example, I have no...I can't do anything about it, it's that person's boat. It's a brand new boat according to fishing history and fishing rights. At the same time, when I retained my rights, I fully expect that I have got a vessel's rights, with fishing history and fishing rights, that would qualify it for a license. We don't have anything to do with each other anymore. We had a clean agreement. So I think in any situation where there are retained rights, you in effect, come up with two vessels. Now whether two vessels qualify or not for the license will depend on the situation that we have, the situation of the two vessels, the year that it was transferred. Really there is nothing that I can see that we can do about it. It's two boats. Once we've made an agreement that I have now all of the old history and the new boat has no history, then there's nothing that we can say. That's the whole idea, I think, in the moratorium, where we're talking about replacing a vessel. That's what that means. I take my vessel that I had, I get rid of it, it goes away, it's no longer in the fishery. I sell it to somebody else, retain my rights, and put it on my new boat. I've replaced a vessel under the moratorium. I don't have any authority over the old vessel any more. But if that old vessel goes out and participates in the fishery and happened to qualify under the moratorium, after he bought it, he should qualify. That's a brand new vessel, it should qualify.

Benton: Mr. Chairman, if I might ask staff a couple of questions. Give me a specific instance where this is going to occur.

Hartley: Well, here's an example. Let's say that I owned a vessel.

Benton: Would you be very specific, like what size vessels this occurs with, what vessels would fall into this particular instance.

Hartley: O.K. I own a 160 foot freezer longliner. In 1990 I sell my vessel to John, and I replace it with 150 foot freezer longliner. O.K. Actually, I don't replace it, because I try to get financing, it takes two years, just to make the story a little nicer. O.K.

Benton: That's 1992?

Hartley: Yeah. And finally, in August of 1992, my new boat comes into the fishery, but I'm certain that I can replace my old vessel, because I retained the rights in the sale. And the new boat now comes in and I've transferred the rights to it and it's qualified. Everybody thought that that's what a replacement of a vessel was under the moratorium. In the meantime, John, diligent fishermen, hard working, goes right out and starts fishing, 1991, 1992, 1993, 1994, 1995. Because that's what he has the right to do when he buys a fishing vessel. It's a brand new vessel, it didn't have any history on it, but now he's got two years of moratorium history, four years of license history. That vessel should qualify.

Tillion: That would be fine, so long as he'd qualified on his own. But for anything that he had not qualified for...had not fished crab or something else, he's out. The other fellow has that.

Hartley: Right. Absolutely. Absolutely.

Benton: That's not...[Several people talking at once.]

Tillion: No, that's not the problem.

Benton: I think the issue you were raising was the one you put in the book, which is...

Hartley: Well that's the same, that is exactly the same...is the same issue.

Benton: No, it's different. It's a little different.

Tillion: No, no. You're not qualifying one vessel for two separate fisheries. The person has earned their rights on that vessel themselves.

Benton: The buyer in this instance has earned his rights under the moratorium, and the seller retained his moratorium rights, and that's a function and a factor of the moratorium. That would have pretty much occurred irrespective of what has gone on.

Pautzke: That wasn't a good example, I don't think.

Benton: No, it was not a good example, and that's why I asked the question. The issue really comes down to, I believe, what happens with vessels that were sold after 1/1/95, which is the one you have in the document. And that particular issue is germane really, to vessels that, I believe...under 60 feet, because of the difference in the general qualifying period. And that is an issue.

Chris Oliver: Mr. Chairman, unless I'm misunderstanding...I guess our only point was, in that situation though, both people legitimately earned their catch history. They happened to do it with the same vessel, in the base period.

Tillion: That's no problem.

Hartley: In the example in the book, remember, you can qualify a brand new 58 foot boat by making one pot landing, or two or ten, in any period 1992 through 1995. Now if in that example I had said that the vessel was sold in 1993, the exact same situation would occur. Both boats...both owners will qualify because we have that little bit of a quirk in our license program.

Tillion: That's not a quirk. They've both earned it. The one that we're talking about is, suppose you bought the boat on the first of May, 1995. We took our action on June, 1995. You haven't had time to get any credit, the other fellow has retained the fishing rights, you're SOL. You're done.

Hartley: Absolutely. There's no question about that, and we're not saying that. I think perhaps the solution is to say that we're only going to honor retained rights or transfers of rights when in fact there is a vessel that sells and that is transferred at the same time. I don't think you would want John to retain the rights one year, and then I get the rights another year, and then Darrell gets the rights, and then Chris gets the rights, without having actually sold the vessel in the meantime. And so I think you can clear up maybe this confusion, if there is some, by saying that we'll honor transfers or retentions of fishing vessel rights only if there has been a transfer of the vessel at the same time. And when you get that transfer of the vessel, then you have a new entity, a new ownership, and a new opportunity to qualify on your own rights and your own history.

Behnken: So then in the first case, the first example you gave, on June 17th we had two vessels, and in fact, two people that are going to get licenses. But in the situation that's in our book, which is only specific I believe, to vessels under 60 feet, then we actually have one boat and two people that have qualified, right?

Hartley: Well, the old boat, the seller, X in this case, has no boat, he's sold the boat, and his intent, I assumed in that example, was that he was going to replace it with a new vessel at some point in time, and I just didn't have that in the example. But there were two licenses that would come out of that one history, that one vessel's history.

Behnken: Right, because he had in fact retained the right.

Hartley: Right.

Lauber: I don't see that...and I understand that staff has a problem, but I don't see what the big fuss is over. Let's say we have the situation where the two people, two human beings, one person has a boat and has fished it for years and continues to fish it and continues to fish it right now. Some point in time they start talking about negotiating, and this one guy that doesn't have a boat wants to buy it from him and the guy's thinking about it, and maybe getting a better boat, but he decides not to sell it. So because of that, the prospective buyer says, well I can't buy that boat, so I'll go and build a boat, or buy another boat, and I enter the fishery. What the hell have we done? I mean, nothing. It's exactly the same thing. And when we've got two people in the fishery, obviously they both qualified on their own, it doesn't make any difference whether it was a brand new boat, as Marcus says, to the new buyer. It's like when you buy a used car, I mean, it's new to you. You know, if the guy retains the right, what's the big fuss? We just say, you get whatever rights you earned on your own.

Hartley: I apologize Mr. Chairman. I had understood the discussion to be saying that one vessel, one license. I thought that was what the discussion was talking about.

O'Leary: It is one vessel, one license.

Pautzke: O.K. There's both vessels are in the fishery on this 17th of June at that time, even though the guy's base period was on one vessel, and endorsement period was on the new vessel, both of those were in the fishery on the

17th of June. I thought the case you were going to be talking about is where you have those special provisions where you get the license if you just played during the endorsement period, for those smaller vessels.

Benton: That's really the one that...that is the one that...

O'Leary: That's the germane issue. [Several people talking at once.]

Hartley: From my perspective, I think it's the same kind of an issue. Two qualifying histories are created. Any, you know, I could come up with a situation where a large vessel can have exactly this same situation. For example, I was talking with Fred Yeck. We all know Fred's got three brothers, and they are very close and they'd swap boats back and forth. Well, Fred could sell to Lyle during the moratorium qualifying period, Lyle could fish it 1991, 1992, 1993, then Lyle could sell the boat back to Fred, and then Fred could fish it in 1994 and 1995, and in each case they retained their rights to the history, there's two qualifying fish histories then.

Tillion: Mr. Chairman, if they did it already, they make it.

Hartley: Right, and that's all...

Tillion: And if they didn't do it already, they don't have a chance to now. The thing is, that the transfer, the actual transfer had to have taken place, not just skipper.

Benton: Well, in that instance, Mr. Chairman, there would still be a problem because they had to have the general qualifying period and the endorsement qualifying period, except in certain instances, which we're going to talk about subsequently, except for this one instance of the small vessels where you might get into some kind of a difficulty. And in that instance, if you have a general underlying principle of one vessel, one license, I think, and then that becomes a domestic dispute between the parties that has to be resolved before the license is issued. I think we've pretty much resolved those issues. Because in the instance again, that Marcus has raised, if you're reserving the rights, then you're either reserving all of those rights, but if you're only reserving part of them, you still aren't going to qualify, you have to have the suite of rights, except in this one particular situation.

Lauber: O.K. I want to make sure that the staff...in some ways is asking for clarification here, and I'm not sure that we've given it to you on this, Marcus.

Hartley: I think I...you're going to honor those retained rights.

Lauber: That's my understanding, yes.

Hartley: And basically, it means that you've severed the fish histories, and in the sense, there's two fishing histories that may qualify.

Lauber: That's my understanding.

Hartley: O.K. I'm completely on board with...

Pennoyer: And therefore, potentially two vessels.

Hartley: And therefore, potentially two licenses.

Pennoyer: It's not one license, one vessel, one license.

Lauber: Now when we get to this other issue, which I believe is what Mr. Benton really was driving at with his motion, the one license, one vessel. Were you more dealing with this, as you saw it, the under 60 feet, which may be involved with larger vessels, but we'll have to explore that. Is that what you were referring to?

Benton: That was what I was driving at, Mr. Chairman, yes.

Lauber: So, now to...can you explain to us how that differs, and what we're talking about here. It wasn't apparently exactly the same issue, was it?

Benton: Well, as I understand it, you'd have under the under 60 foot vessel category, for example, and staff help me out here if I've got your example wrong, but my understanding is is that then you have a vessel that meets all those qualifications, it transfers on 1/1/95 with retained rights. So the person that was fishing that vessel prior to 1/1/95, so in 1994 or previously, they kept those rights and they met all the qualifications. And this is germane to the under 60 foot category because of the extension of the GQP. Then in that instance, that buyer winds up with the full suite of rights again. So in essence, you have one vessel and two sets of rights, and then it becomes sort of a difficult situation. And that's the one instance that I could see where it was a problem.

Hartley: And I apologize there, Mr. Chairman. The license in that very situation that would go to fisher Y is one of those very limited, one FMP area licenses, and in fact, there's no moratorium qualifying rights at all there. And so I think we've captured the...they don't get the full suite. They get that one area license. And I'm sorry I used that, perhaps, sloppy example. I didn't want to get out too unbelievable, and that seemed fairly believable, and I apologize.

Lauber: O.K. Does that resolve this issue? Yes, John.

Lepore: Mr. Chairman, if I could go over what this motion was and see if my understanding is clear. Would that be fine?

Lauber: O.K. Let's do that. Want to make sure.

Lepore: O.K. Before 6/17/95, we would recognize the transfer of rights if there were no dispute. If there is a dispute, no license would be issued until that dispute is resolved. And the default is that the rights go with the vessel unless there was some type of agreement. After 6/17/95, must have a written agreement for the license to go to someone other than the owner of the vessel on 6/17/95. Is that reflective of the motion?

Tillion: That's it.

Lauber: That's what we passed before.

Benton: That's essentially what we've been saying.

Pautzke: That's not this one though.

Lauber: Well, but that's alright. We still want it clarified. He's the one that's got to do it. Now do you have the other issue, is that resolved also to your satisfaction? The last one we've talked to. O.K. Alright, do we move now to the next one, lost vessel treatment. Is that...

Pautzke: We just assume you voted on that motion of the sense of the Council, so now we move on to the loss treatment, right?

O'Leary: What's the AP say about that?

Pautzke: The AP recommended there be no additional special exemptions be made for lost vessels, and the motion carried 16-1-1. Is there some clarification from the staff you need to give us? Darrell?

Darrell Braman: No, Mr. Chairman, would you like me to walk through that issue real briefly for you once again? You'll notice that on that handout, the lost vessel, this portion of that treatment was the vessels that could still qualify for the moratorium by making a landing within two years of the implementation date of the moratorium, either 1996 or 1997, and still qualify for the moratorium, but they wouldn't be allowed to earn license endorsements later than the 6/17/95 cutoff date. So basically they could still qualify for the moratorium, but they'd be out of the license limitation program. The minimum landings part of this discussion will come under option 5, under further Council discussion, and we'll get to that one later.

Lauber: O.K. What's your pleasure? Follow the AP recommendation? Or does somebody have another suggestion?

Benton: Mr. Chairman, I think that we generally are going to...I would support sticking with the AP's recommendation. I believe that at the June meeting the Council had an extensive discussion about hardship cases and about lost vessels and replacement of lost vessels, or other hardships that might occur. I distinctly remember, I think it was Mr. Pereyra, bringing up the issue of a, you know, catastrophic engine failure, and Dr. Collinsworth saying in his opinion, any engine failure was catastrophic. And I remember that discussion fairly well. And item number 8 sort of speaks to that...that's in the general provisions, speaks to that on hardships. And then also when we dealt with vessel replacements and upgrades, I think we also had quite a discussion about what happens with lost vessels. And I believe that the Council had a recognition that under the moratorium, that this was...that there was somewhat of a period where this could go forward, but that there was an interest on the part of the Council, at least that's my recollection, that it was time to say, O.K. again here is a bright line. And when you look at it and think about it a bit, it does make some sense, in that the right to bring a vessel back into the fishery under the moratorium was to give that vessel the opportunity to participate under the moratorium and continue fishing. And when you look at the license program, I think the license program, when we were debating it, it was pretty clear and on the record, in my mind anyway, that we decided there had been a lot of time gone by since the moratorium was first adopted by the Council, people were certainly on notice that they needed to get going with the process with replacing or salvaging a vessel, and that it was time to just say here's the rules. But that's my recollection.

Lauber: O.K. Any further discussion? I don't know if that was a motion or what, but...

Benton: I can make it one if it's necessary.

Pautzke: The AP recommendation? Is that what it is?

Lauber: The AP recommendation, no special treatment.

Benton: I move we adopt the AP recommendation.

Behnken: Second.

Lauber: Any further discussion on that? Is there any objection to the motion of adopting the AP recommendation on lost vessels?

Benton: Mr. Chairman, if I could have one more comment on that matter. I would just point out that those vessels still could be, in the intervening period, could still be brought back under the rules of the moratorium. Until this license program is adopted, they could be operated. The owners could of course purchase endorsements and operate those vessels if they wanted to, under the license program. They're not precluded from operating in the fishery. It doesn't mean that they've totally lost the value of those vessels, but it does mean that they would be subsequently required to get a license, I would assume, after the license program was adopted.

Lauber: Is there any further discussion? Any objection to the motion? Hearing none, it passes. O.K. Treatment of crossovers.

Benton: Before we move on, I just want to, you know, there are some differences between issues raised in the staff's memorandum, and in Mr. Pennoyer's letter. But they're sort of in the same general categories, and I guess I am interested in hearing whether or not, as we go through these, there are additional issues raised in Mr. Pennoyer's letter under these headings that we have not dealt with that need to be talked about and addressed.

Pennoyer: Mr. Chairman, that's fair, and that's why John joined the staff at the table. Not assuming they weren't going to do an excellent job, but in fact that any of these issues that overlap have additional clarification required, John will bring it up as we go along. My assumption is, in these first ones we don't.

Lauber: Did what we just did have anything to do with number five in the next thing?

Lepore: Mr. Chairman, yes it does. It's a slightly separate issue. It doesn't have to do with the moratorium situation, it has to do with the relaxation of landing requirements under provision eight.

Lauber: So you'll explain that to us when we get to that. What the little difference is.

Benton: And you have that under hardship?

Lepore: That is correct, yes sir.

Lauber: Now shall we move to speaking to the crossovers, number three.

Oliver: Marcus is going to put up...

Lauber: Is this going to take awhile? Why don't we take a break.

Lauber: O.K. We are on license limitation issues, and number three, treatment of crossovers, particularly Bering Sea/Aleutian Islands crab vessels. Staff have any presentation here for us? I see the screen's up there.

Oliver: I could quickly recap the issue and the question, Mr. Chairman. Basically, when the Council passed their program in June, you gave us a couple of criteria for defining how a vessel could earn endorsements. For example, a vessel to earn groundfish endorsements in a given FMP area, you indicated that that vessel would have had to have also fished that particular FMP area in the base period, as well as the endorsement period. And that situation is captured in the last two rows of the table. The last row, for example, a vessel that fished Gulf groundfish in the base period, fished both areas in the endorsement period, would only receive the endorsements for the Gulf. At the same time, you gave us...you also wanted to recognize moratorium crossovers. So when we got back to the office, we were in a dilemma as to how to treat vessels that fished only Bering Sea crab in the base period, then fished groundfish in both Bering Sea and Gulf in the endorsement period, which of the rules should be give precedence? The one that recognizes full crossovers, or for example, should we apply the same standard

that you had to have fished an area in the base period to earn groundfish endorsements in the base period. So that was our dilemma, should we give those Bering Sea crab vessels their full suite of endorsements in both the Gulf and the Bering Sea, or should they be limited to receiving only the Bering Sea endorsements. An alternative way to look at this issue, and I think it's the way the AP did, was to go back and revisit how you treated the groundfish vessels, in terms of giving...whether or not to give them their full suite of endorsements in both areas. And so there's two different ways you could get at the issue. But again, we just need some direction on how to treat that issue.

Behnken: Mr. Chairman, in looking at the memo from the staff, my recommendation, and I'll make it in the form of a motion, for at least the first part of this issue, would be that we use the alternative they suggested at number one, [change to tape 54] which would require the 23 BSAI crabbers who crossed over in both the BSAI and GOA to relinquish their GOA endorsements and receive only a Bering Sea license...or Bering Sea/Aleutian Island. If I have a second, I'll give my reasons.

O'Leary: I'll second it.

Behnken: My reasons are, the crossover provision was to allow some of these Bering Sea/Aleutian Island crabbers to enter into the groundfish fisheries. And we made that for some very specific reasons under the moratorium. I don't think we ever intended to allow additional vessels into the Gulf of Alaska, and it seems to me that alternative number one that the staff's put forward to us is consistent with what we did under the moratorium.

Pennoyer: Mr. Chairman, for further clarification, I think you stated what your intent was. Can you tell me why, so that's on the record when we write this thing up. Why did you intend they only enter Bering Sea groundfish fisheries instead of Gulf groundfish fisheries? I mean, they're competing with the groundfish fishermen in either case, so why was...you say you're going back to your original intent, which wasn't actually stated on the record at the time, I don't think, or at least we didn't do it. Can you tell me why so we can put that in the preamble as we build this thing.

Behnken: I guess I'm sort of missing your question.

Pennoyer: Well my question is, you said your intent was that a Bering Sea crab fisherman only be able to fish groundfish in the Bering Sea, and I didn't hear why that was appropriate. I mean, you're impacting a groundfish fisherman wherever you fish, by your crossover and your additional efforts. I don't know it's not, I just didn't hear you say why that was appropriate. Or did I miss something?

Pautzke: Well, she's being consistent with the way we've treated it in groundfish.

Benton: Mr. Pennoyer, I think that this was discussed somewhat in June, but not exactly you know, exactly clearly. But the issue here is, under the moratorium, the crossover provisions that were adopted, which were adopted, you know, late in the process with the moratorium, were intended to address a problem that was identified where the crab fleet was in sort of a difficult situation because of the status of crab stocks. The Council and the Agency determined that there was a value in allowing them additional opportunities to move from the crab fishery into the groundfish fishery if they were using similar gear and operating in a similar mode as they were in the crab fishery. Now what that suggests, and I think the basis for making that determination is that there's a similarity in operations, a similarity in where these vessels were operating and how they were going about their business, and that if we were going to allow that opportunity and not violate the moratorium altogether, that what we would do is we would make it sort of a limited instance, how they could operate as crossover vessels. I think what this is attempting to do is continue down that track, in that the fishing history is in the Bering Sea for these crab vessels, they are operating in a similar mode because they are restricted to using pots during the crossover

period and under the proposed...or under the rule now, I guess, for the crossover provisions under the moratorium. And I think the intention here is to ensure that we stick with that intent and that the crab vessels would receive their groundfish licenses because of that opportunity afforded to them in the area where they have the bulk of their operations and the bulk of their history. And I think that's consistent. They operated in the Bering Sea, they were Bering Sea crabbers, it's under a Bering Sea plan. And I think if we went the other way, what we would be doing is in some ways creating an unnecessary loophole, in a way. And I think what this is intended to do is to follow the moratorium's intent, or at least the intent of why we went ahead and allowed that opportunity to take place.

Pennoyer: Yeah, the only reason I brought it up is because the moratorium didn't do that. The moratorium allowed, as I understand it, groundfish pot fishing in either area, and this is different, so I think you had to say why the difference was appropriate.

Benton: And in part, Mr. Chairman, if I could follow up. In part, one of the reasons that we were doing some of the...taking some of the actions we were taking here, is to correct what a number of folks around this table, I believe, saw as a deficiency in the moratorium with regard to the crossovers; and that's to put a closure on the crossovers and to not allow for the crossover provision to get away from us and result in even further capitalization in fisheries where it didn't seem appropriate. And we, you know, there's a number of measures that were discussed at the June meeting in this regard, and it was one of the benefits that I think the Council sees overall in the license program, is to take and put closure around the crossovers from one fishery to another. And this is one way to do that in a way that ensures those operations are more consistent with the overall intent of what we were trying to do.

Pereyra: Now, I need a point of clarification here. What if a vessel crossed over in the Gulf of Alaska, he would get a Gulf of Alaska permit?

Benton: Crossed over from...well, there's only a Bering Sea crab fishery under an FMP, so that's the only thing that we're operating off of here. So their base period of operations is in the Bering Sea.

Pautzke: The base period's in the Bering Sea in all of these cases.

Pereyra: But what if a Bering Sea crab vessel crossed over in the Gulf of Alaska? Then he could only fish in the Bering Sea?

Behnken: My understanding...right, because during the base period he had only operated in the Bering Sea. And under our rules for groundfish, you only got your license in the area that you had a base period, except for some very specific situations where we allowed vessels under 60 feet using pot gear to qualify for their endorsements even if they missed the base period, but they could only pick one area. And that's why I also think this is...Mr. Pennoyer's not listening, but...what we're doing with this is consistent with our license program in that regard.

Benton: Mr. Chairman, I think staff might have some information for us on that.

Hartley: Yeah, our assumption here is that if the...well, in the groundfish remember you had a, we called it a forgiveness clause, or something, where if the vessel participated only in the Bering Sea groundfish fishery in the base qualifying period, and only in the GOA groundfish fisheries in the endorsement qualifying period, we would go ahead and give them the Gulf endorsements. The same situation, we would assume, would apply to those crab boats that in the endorsement qualifying period only fished in the Gulf, we would give them their Gulf endorsements. It's only those situations where they fished in both areas, in other words, they fished in the Bering Sea in the base qualifying period, in crab, and then in the endorsement qualifying period fished both Bering Sea

and GOA groundfish, only in that situation would we be taking those Gulf endorsements from those vessels, as we have done in the groundfish fishery.

Benton: Yeah, I concur with that. The only thing I don't concur with...I don't think we're taking anything away from anybody, really, I think what we're doing is affording an opportunity in a sort of limited sense, and correcting what was probably a problem that was generated because of the one minute moratorium that we adopted at the last, you know, in terms of dealing with this problem. And you know, if we had perhaps had more time for consideration of the overall impacts and implications of some of those crossover provisions that were in the moratorium as adopted, we might have made...and this is conjecture on my part, we might have perhaps limited that to the Bering Sea. But it was certainly our intent, I think here, to maintain that consistency and deal with it as has been described.

Lauber: Alright. Any further discussion? Your motion was number one on the...

Pautzke: Mr. Chairman, I think that just to make sure you picked up on what Marcus was saying here, is that one liner in there concerning those 23 vessels...even I was not aware of what he was saying...is I thought that the conditions there were that they had crab in the Bering Sea in the base period, and they had landings in the endorsement period in both the Gulf and the Bering Sea. And I think what you're saying is, there's a subset of those 23 vessels that had a base period landing of crab in the Bering Sea, did not have any endorsement period in the Bering Sea for groundfish, but had it in the Gulf. And so you are going to give those vessels a general license for the Gulf, as the forgiveness feature you were talking about. So that's some subset of the 23 vessels.

Hartley: That's an additional set that we didn't include in that.

Pautzke: Oh, O.K. So these 23 vessels had groundfish landings, and then according to Linda's motion, they will relinquish their Gulf endorsements. That's what's on the table right now.

Lauber: O.K. Any questions? Further discussion? Any objection to the motion?

Pereyra: I object.

Lauber: Dr. Pereyra objects. Any further objections? Mr. Barker objects. Motion carries. Two objections; Barker and Pereyra.

Pautzke: So that takes care of that one line then.

Lauber: Is there further under that item?

Benton: There is a separate instance that staff have identified with the under 60 foot vessels and the situation there. And it seems to me, if I've got this straight, and help me out here if I don't, but what we're dealing with is, we've already answered how this will relate to the crossovers, so what we have here is an instance where, because of the under 60 foot provisions these vessels would qualify under one of two rules, they could qualify under either of the rules. They could either qualify as a crossover vessel and then they would be subject to those rules, or they could qualify as an under 60 foot vessel and they would qualify and have to apply under those rules. Do I have that sort of...is that basically it? O.K. Mr. Chairman, I think this is actually fairly simple. In that instance, I think what we would do is just simply have it be the Council's intent, and I'll make this as a motion if I need to, that where a vessel qualifies under those two rules, they get to choose which rule they want to apply under. They cannot apply under two different rules. You have to say, O.K. I'm applying as pursuant to these rules and these regulations for my license. So in this instance, they would apply either as a crossover vessel, or as a

under 60 foot vessel and choose an area. And that then affords them to make their choice of which way they want to go. Does that...I'm looking at staff...I think that resolves that issue, if that's the intent.

Hartley: Yeah, I think the ambiguity of it is resolved. We won't be able to predict what they might choose, of course, in our analysis, and we could only bracket it. There's only six boats and twelve endorsements, or something, so it's not that...

Benton: Yeah, it's not that significant.

Pereyra: Mr. Chairman, I'm a little bit disturbed here. In the case of vessels under 60 feet we're going to give them the option to make their own decision about where they felt that their interests might be best served, but in the case of vessels in the previous situation that crossed over and had Gulf endorsement, we're saying no, you're going to be in the Bering Sea. And you know, I think we want to consider that a little bit. Is that really consistent? It doesn't seem to me it is.

Benton: Well, no, it is consistent Mr. Chairman, I believe, because what we've said is, they can either qualify as a...in this instance they meet two different rules, and they could choose to qualify as a crossover vessel, in which case they would be bound by the same rules as those other crossover vessels. Period. Now because they also happened to qualify under a separate qualification standard because they're under 60 feet and we have this provision in recognition of the differences with the under 60 foot category, they could also elect to go that way. And the practical effect of that, I believe will be, that they're going to either choose that they're going to operate in the Bering Sea, or they're going to choose to operate in the Gulf of Alaska, because if they go with the under 60 foot category rule, they get to choose one area and one subarea. And if they go with the crossover rule, they're in the Bering Sea because they're BSAI crab vessels.

Pereyra: Well, I can see the situation there, but in the previous example, why didn't we allow the vessels to make a decision as to whether they wanted to have their groundfish endorsements count for either the Bering Sea or the Gulf of Alaska...let them make that choice rather than automatically saying, no you're going to be in the Bering Sea, you're not going to be in the Gulf. I mean, if choice is good for one, choice should be good for the other.

Lauber: We didn't have a dual situation...

Pereyra: But they would qualify for both...I think you're being inconsistent. But that's not the first time the Council's been inconsistent on something.

Lauber: Any further discussion?

Behnken: I'll just take a crack at responding to that. I mean, my recollection of the discussions we had with the under 60 foot vessel was, they're a pretty small part of the capacity...or overcapacity problem, in either the Gulf of Alaska or the Bering Sea, but they're a fleet that is really dependant on having some measure of, or ability to be mobile, to diversify, to move around. And so we gave them this EQP qualifying window that said, O.K. you missed the base, but you can qualify for an endorsement. We didn't want to make it wide open, so we said you can only pick one area, and we gave them that opportunity. I think that with the larger size vessels, there's a really big difference in them shifting around between areas and impacts on capacity, and that's why we made that call.

Benton: I think there's an important distinction here, and maybe I'm not doing a very good job of explaining it. But the distinction, in my mind at least, is that the first job that we have before us is to define the rules and clarify what those rules are and to try and make those rules as standardized as we can. And so that's why I think it's

important that we went through and clarified; here's the rules for crossovers that we allowed from the Bering Sea, the Bering Sea crabbers that were operating under a Bering Sea FMP, and the moratorium crossover provisions which were adopted. And we clarified how that rule would operate. And that rule is consistent across the board, for everyone. Then what you have to do, and what I think we're attempting to do here, is to deal with instances where it's sort of the exception that proves the rule. And so in those instances where you have people that are in an exceptional category, or an extraordinary category, and in this instance, it's where they qualify under two different rules. We're saying that they in this instance can choose, in terms of how they're going to apply, but they have to choose a rule. That rule is consistent for everybody that chooses to apply under that rule. Or if they apply under a different rule, and they meet the qualifications under that different rule, then of course that rule applies to them, and anybody else that applies under that rule that qualifies under that rule. The rules will be consistent. It's just for certain individuals, they may just due to their particular circumstances, and I think that this will be the exception, not the general instance. What we're saying is, you can't apply under both rules and get two different kinds of endorsements that nobody else could get. You have to choose a rule and go with it. And the rules will be consistent.

Lauber: Any further discussion? Ready for the question? I'll try it. Is there any objection?

Pereyra: I object.

Lauber: Dr. Pereyra objects. Motion carries.

Pautzke: That gives the six vessels a choice for endorsements.

Benton: Of which rule they get to apply.

Pautzke: Which rule would apply, yeah. Now did we cover thoroughly this first, the top row there where we have assumed that we're going to give them a Bering Sea and a Gulf of Alaska license?

Oliver: Yeah. The action by the Council clarifies that those crab vessels are only going to get their Bering Sea groundfish endorsements.

Pautzke: Not the top row. The top row they have a Gulf of Alaska groundfish base period, plus a Gulf of Alaska endorsement period, so they get that one. And then they had a crab landing in the base period in the Bering Sea and an endorsement groundfish landing, so we're going to give them that groundfish license too. So they're going to have both suites of licenses and endorsements. That's how we phrase it in here...that what we're going to do. Just so you know.

Oliver: Basically, we're going to shade the number 20 on the second row. Yeah I know, it stays the same, the first row doesn't change.

Lauber: Is there anything further now on treatment of crossovers?

Oliver: That's all Mr. Chairman.

Lauber: Can we move on to the second set, number one, qualification for state water landings...state waters landings.

Pereyra: Mr. Chairman, I think in this particular case we are potentially creating a situation where there could be a significant increase in effort, both inside and outside, both inside state waters and in federal waters. And the example being, that if a person has a vessel that has only fished in state waters, and that person really has no

intent of fishing outside of state waters, they don't need a federal permit. Yet if we go ahead and we issue them a federal permit, then that federal permit could be sold or transferred to a vessel which has no history whatsoever in either state waters or federal waters, and thereby could fish in federal waters, and of course could continue to fish in state waters. So I think that the way the AP has addressed this is probably the right way to go, and I think they had a fairly long discussion on it. And that is, that only those vessels which had federal permits that had landings in state waters would be issued a federal permit. I think again, that shows that they had an intent, whether that intent was exercised or not, had the intent of fishing in federal waters. Otherwise I do think we're going to be creating a situation for increases in effort, which is not something that I think we intended to do when we did the license plan.

Lauber: Was that a motion?

Pereyra: Yeah, it was in the form of a motion to accept the AP's recommendation.

(?): Second.

Lauber: Yeah, Mr. Benton. Well I think he spoke to his motion before.

Pereyra: Yeah, he spoke to it.

Benton: You already spoke to that, huh?

Pereyra: It's a preamble to my motion.

Benton: Well actually, I had a question for the maker of the motion before I responded, and I guess my question is, how would that increase in capacity occur, in your mind.

Pereyra: The way the increase in capacity would occur would be, somebody gets a permit who only wants to fish in state waters, he has a federal permit, he's never going to use it, but he's got it. And there happens to be a vessel operator in you know, Biloxi, Mississippi, who decides he wants to come up here and go fishing in the Gulf of Alaska. This fellow has got this permit in state waters who has no intention of fishing in federal waters, and just sells him his permit, and the fellow from Biloxi, Mississippi, comes up here. Now I'm not trying to discriminate against people from Biloxi, Mississippi, don't get me wrong, but I'm just saying that you've got to...again, here you've got a vessel coming into the fishery which you never intended to have come in. If a person had a federal permit, the chances of him selling that permit probably are...certainly he could do that and stay in state waters, but the chances of him selling it are probably a lot less because he probably has an intention of fishing in federal waters. So in that case, I think the likelihood of an increase in effort is probably less.

Lauber: Any further discussion?

Benton: Mr. Chairman, I would like to discuss this just a bit. Mr. Chairman, this is going to be fairly long, I think. The first issue really comes down to consistency, in my mind. And under the FMP for both the Gulf and the Bering Sea, since they were first adopted, the distinctions between state and federal waters have not been drawn, really. The stocks are managed pursuant to the FMP. The state has cooperated fully in that with regard to state waters. Landings from state waters are incorporated directly into the groundfish data base and are recognized. When the Council adopted the moratorium, the moratorium extended, in essence, into state waters because landings from state waters counted for moratorium rights, and that of course has recently been approved by the Secretary. And I think in other parts of the country, generally, like for example, I believe on the west coast that landings from state waters down there have also counted for awarding licenses in those fisheries. And I guess that the distinction that's being drawn at this time between state and federal waters, is going to I believe, unduly

penalize people that were participating in a fishery. It's not going to raise the overall number of licenses that are going to be available in these fisheries necessarily, because of course, those people are in the data base. We've got a finite number of licenses that are going to be issued for federal waters, and we've reduced those numbers of vessels by well over a thousand vessels already. And I don't see that this is going to lead to a major influx in capacity. For one thing, almost all of those landings in state waters are by very small vessels operating in other fisheries or engaging in small, local fisheries for groundfish near the coastal communities using vessels that are primarily salmon vessels. I'll stop with that, Mr. Chairman. Thank you.

David Fluharty: This is a question for staff, in terms of...did we count these state vessels as eligible for a license with a part of the analysis and include it in our counting, or was there a separate class of state only fishing vessels that was not included?

Brannan: Mr. Chairman, in our data base we included those vessels. We didn't separate out whether the landings were made in state waters or whether the landings were made in federal waters. In a nutshell, that's what we did. All of the landings that were recorded on fish tickets, which is where these landings would have come from, were included in our database.

Tillion: They did operate under our TAC, did they not? And therefore they were operating under a federal TAC, so what's the problem?

Lauber: Further discussion?

Robert Mace: There's no real indication of the magnitude of this...numbers.

Brannan: Mr. Chairman, when the National Marine Fisheries Service indicated that they would be bringing this issue up, I did a preliminary look at the number of vessels that might be impacted by requiring that a federal permit be held in the year that the landings were made during the endorsement qualifying period. And based on that preliminary look, it looked like the fleet could be reduced by approximately 25% over those that would have been issued licenses without requiring a federal permit in the year that the landings were made.

Pennoyer: But clarification...the fleet would be reduced by 25%, only the fleet that could fish in federal waters. If we're assuming that prior to this program, fishing in state waters was fishing, quote, on a federal TAC, that could continue. This doesn't actually reduce the fleet at all. I mean, even the AP motion doesn't reduce the fleet at all. It simply reduces the fleet that could go out into federal waters that had no history of fishing in federal waters. But the overall fleet, including those that are now fishing on the TAC in state waters, stays the same, does it not?

Brannan: Dr. Pennoyer is correct. The license limitation does not impact vessels that are fishing in state waters. The only difference is, under the license program as it's currently designed, they would receive a license and they could continue fishing [change to tape 55] in state waters, because those waters aren't covered under the license limitation program.

Tillion: Yes, while the numbers are to be reduced, do you have a breakdown on the size of the vessels? Most of these are locked in under our limited entry program to not be able to increase their size anyway. Are they not?

Brannan: Mr. Chairman, the vast number of these vessels would be in the 60 foot category and under. What I didn't look at when I made this preliminary run was how many of those vessels would have been less than 26 feet in the Gulf of Alaska, and less than 32 feet in the Bering Sea/Aleutian Islands. As you will recall, those vessels are exempt from the license limitation program and wouldn't be required to have a license to fish in the EEZ. So it looked like, you know, well over 90% of the vessels would be under the 60 foot category. I don't know how many of those would fall in the 26 and 32 foot categories.

Pereyra: Yes, two points. First of all, with regards to the capacity issue, the impact of capacity has to be viewed in terms of the species themselves. For example, if you're talking about Demersal Shelf Rockfish, you're not talking about factory trawlers, you're talking about small longline vessels that potentially could have a significant increase on Demersal Shelf Rockfish in terms of the size of the fishery. So that issue is one that has to be looked at very specifically. The other question is regarding consistency. We've gone to great lengths to provide...to require area endorsements, you know, longitudinally along the coast. This seems to me to be consistent with that. You know, you fish in state waters, you stay in state waters, you fish in federal waters, you fish in federal waters. There seems to be, you know, a lack of consistency if we don't restrict the issuance of these permits to vessels which have received federal permits to operate in federal waters.

Behnken: I just have a question. Mr. Pereyra is saying if you fish in federal waters, you stay in federal waters, if you fish in state, you stay in state. Well, if someone gets a license under our program, they can still go fish in state waters if you do this. There's nothing to keep them from doing that, so I don't see that.

Pereyra: But that's not a deficiency in our licensing program, that's a deficiency in the state's licensing program. I know, that's what I say. It's not a result of what we've done in our licensing program, it's what the state has not done. If the state issued a license and required that only vessels which had fished in the state waters could receive a license to operate in state waters, then that problem wouldn't exist. So I don't see why we should allow for expanded effort in our, you know, our area of responsibility, because of something that the state has to date not done.

Lisa Lindeman: Mr. Chairman, with respect to this issue, a question that we would ask is, with respect to fairness and consistency with standard 4, is for someone to explain how it's fair to allow a vessel that fished only in state waters, and never depended on the federal fishery, to receive a license, but to at the same time deny a license to a person who fished recently in the federal fishery, but didn't qualify during the base or the endorsement period, but did depend on, you know, has recently depended on the federal fishery, and how is that fair.

Benton: Well, I'll approach Counselor's issue first, I guess. Counselor, the rules regarding qualifications for the licenses are going to be...it would be the same whether the person had fished in state waters or not, in terms of the qualifying periods and all of the other rules. So the consistency with the rules is the same and would apply across the board. And if those people, just like the person that you mentioned, didn't meet the overall qualification standards because they didn't have enough participation in that regard, then they are not going to be able to qualify. So the distinction about how the rules are applied have nothing really to do with state waters versus federal waters, it has to do with the particular situation with the individuals. If I can continue. The people that did fish in state waters were dependant on the federal fishery. The federal management system set the TACs, the stock assessment that is done under federal management plans and programs guide and determine what happens with those fisheries inside state waters. And that is the way these fisheries have operated for any number of years. And those individuals are fishing on those same stocks, and they are fishing according to the rules that were adopted pursuant to regulations this Council...or plans this Council has adopted. And in the instance of state waters, the state's opening and closing fisheries largely, with some minor exceptions in conformance with those exact rules. And where they're not in conformance, they are consistent. So I think that there is...and it is a direct relationship between individuals that are fishing, have a history, a documented history of fishing in state waters and landing groundfish, groundfish that are managed pursuant to an FMP that's adopted by this Council and adopted by the Secretary and implemented by our respective management agencies. And I think it would be inconsistent, at this juncture, for us to ignore that dependence and that management system, a history of which has happened since this Council was first instituted. Now the other thing I would point out is that it's incorrect to say that many of these individuals had no history in the EEZ. I mean, in some instances, you have individuals that have landed groundfish in state waters that fished in federal waters, pursuant to a salmon FMP in Southeast Alaska. So they have fished in the EEZ, it's just that they've fished in the EEZ for salmon, they caught groundfish in state waters, they're all reported on state fish tickets, and they're in the data base. Those

individuals are still dependent on the EEZ and fisheries in the EEZ, it's just a sort of particular difference in their circumstance. I guess that I for one, in terms of fishing history and which fishing history you're going to count, find it extremely inconsistent that we're not going to recognize this instance, when under the moratorium we're going to grant moratorium rights to individuals that fished in state waters, landed groundfish, and made a recorded landing of groundfish in state waters. And that consistency I think is very important. And finally, I guess that the other instance that I find it very inconsistent is that when we adopted an IFQ program for halibut and sablefish, the catch history for sablefish in state waters is counted for individuals getting their IFQ and getting quota shares and awarded property rights to a certain quota of fish by the Council and by the Secretary, based on those landings in state waters. And I think that that shows a direct relationship, shows consistency with the way the management program is run, shows consistency with the way the stocks have been managed, and shows consistency with the way the data is recorded. I guess to do something else with no prior notice, and after extensive debate of this issue, is going to cause a real problem. And it's going to, I think, make all the other actions we've taken inconsistent.

Lindeman: Mr. Benton, you're stressing the consistency with moratorium and consistency with management of TACs and stuff, but our concern is, you need to address the fairness aspect. Standard four requires, not that it be consistent with other programs, that's a policy call, whatever, on the part of the Council and the Secretary, but the program that you come up with has to be fair.

Lauber: I thought he did that at the very beginning.

Benton: Mr. Chairman, can I speak? Could I respond to the question?

Lindeman: I'm just stressing that again, that's what we'll be looking at.

Lauber: Go ahead Mr. Benton, clarify that. Apparently she didn't hear that.

Benton: Counselor, I think I would find it extremely unfair if we engaged in such inconsistencies as I've identified, that the fairness issue here is addressed because the rules under the license program would apply to anybody; the qualification rules. And I spoke to this I thought, at quite some length. The fairness issue really comes down to; are the same standards being applied to an individual to get a license, in terms of the qualifications for that license. In other words, like in Dr. Pereyra's instance, it would be inconsistent if we said, if you fished in state waters you automatically get a license. We're not saying that. What we're saying is that if you made a landing in state waters, and that landing made...you know, and those landings resulted in you meeting the qualifications that are set forward in terms of landing requirements and participation in the general qualifying period, and all the other rules that we've laid out in this program. If those landings resulted in you meeting those qualifications, you'd get a license. We're not saying that just because you made a landing in state waters you're getting a license. So the individual from Biloxi, Mississippi, and I like people from Biloxi, Mississippi, myself...if they meet those same requirements, those landings requirements under the license program, they're going to get one. Whether they made those landings inside state waters or outside state waters in the EEZ, that would be consistent, in my view. And that is fair. Just like it would be unfair to say that because the people came from Biloxi, Mississippi, all they have to do is make a landing, or no landings, and they're going to get a license...that would also be unfair. So that you have to have clear rules, the rules are in the license program, those rules apply across the board to everyone. The only thing that I'm saying is that it would be unfair and inconsistent if we did not recognize those landings that were made pursuant to this management system that has been in place for all these many years.

Pennoyer: You know, this came up under the moratorium, and as you know, I had trouble with the concept during the moratorium discussion. It was approved by the Secretary and it went forward. Again, as in this case, I'm not sure what the practical impact is going to be on capacity. Obviously if somebody fishing in state waters chose

to use that federal license, there's no impact probably anyhow, because he could continue to fish in state waters. The only impact comes if the license is sold, a person continues his past practices fishing in state waters under the federal TAC, however we work that out, and so he gets to continue that and you additionally add another boat to federal waters. So there is an increase in capacity. I don't know how much it is. Now that is consistent with the moratorium, but we all along here in several of these other discussions, have said cutting down from the moratorium is an acceptable thing to do. We have said that we are not necessarily going to be consistent with the moratorium. Look at the question of vessel loss. We specifically decided not to be consistent with the moratorium because this program is intended to tighten up from the moratorium. I don't, again, had not come in here interested in the fact that we were going to change something, but I wanted to find out why we thought this was a necessity. I think even if you adopted the AP motion, the consistent practice of fishing on federal TACs in state waters would continue. There is no change in that at all. So I don't know that I've...well, it's true that they're going to be consistently held to the question of being in the right qualification period, so prospectively this doesn't have any impact at all. Nevertheless, they are not being denied a fishery in state waters on federal TACs, even if you adopted the AP motion. And I guess what I need to understand, Dave, is as we tried to do under the moratorium, is why you think it's necessary that these people enter an EEZ fishery in which they have no record of participation, even though they can continue to participate in state waters as they have in the past. My presumption is that if they were fishing in the EEZ without an EEZ license, and therefore you've got the question of where the fish really were landed, they could have been picked up for doing that. I mean, enforcement-wise, that could of happened at any time, as it could in the future if they decided to do that practice. So you're not denying them anything they've said they've been doing all along by adopting the AP motion, which I have not been pushing. I'm just trying to understand your rationale for not wanting to do that. And if that's clearly on the record, and it's not just consistent with the moratorium, or not...because we've done other things that aren't consistent with the moratorium, but it's somehow consistent with the logic of this Council in reducing effort while still accommodating, for example, in the Gulf I understand some of the social-economic needs that are different than the Bering Sea. And I don't know why letting people continue to do what they've said they've been doing all along is a dis-accommodation. So that's what I think you need on the record, and I don't think you've really spoken to that yet.

Tillion: Mr. Chairman, at the present time our seasons for cod fish in the northeastern Gulf have been in those early months when the cod are in close to shore. You would be committing a very unfair act if you denied these vessels the right to follow those same fish if we were to change the season. If you had this harvest in July, you would have to be in the EEZ. They're not in there anymore. When you're fishing in January, February, and March you don't have to go out in the Gulf to catch them, they're right in close to shore, so you're fishing in state waters, both for the shelter and otherwise. So during the qualifying periods we've had, there has been no open season when the bulk of the stocks that they had to fish were in EEZ waters. They were readily available right near town, close to shore, and so their records were built therein. If we deny them the right to go to the EEZ when we change our seasons, we might very well lock out a whole segment of the fleet that has been fishing close in because we've now opened the season where the fish aren't there any more.

Behnken: I guess I would add to that. That's one situation I was going to mention. The other, which Mr. Benton alluded to, but just to elaborate, is the Southeast troll fishery which is operating in federal waters and often is taking groundfish pursuant to that as bycatch, in a bycatch mode, and landing that, and when it's sold is required to put it on a miscellaneous fin fish card, which is a state card. So there's nothing showing that they are fishing...that they are actually participating and depending on a federal fishery, when in fact they are. And you would be closing those people out of an opportunity that they have always depended on. I think, you know, those are the two situations I can think of. I imagine there's others. I think the ling cod fishery would probably fall into the same situation.

Pereyra: Mr. Chairman, I'm somewhat concerned. You mean that these vessels can fish in federal waters without a federal permit?

Behnken: Well, they're under a federal FMP for salmon, but it's a state managed limited entry fishery.

Pereyra: I'm still confused. But Mr. Chairman, regarding this fairness issue, earlier we saw fit to deny Gulf of Alaska participation by those vessels that had crossed over and had fished during the endorsement period in the GOA. I personally felt that that was unfair, and I voted against it. Earlier, a couple of days ago, there was quite a bit of testimony given to us by people in the Western Gulf, small vessel operators in the Western Gulf, that said what we did to them was unfair. We required a greater landing requirement for vessels to get the endorsement for Central and Southeast Outside, than we did for the Western Gulf. Lots of protection for boats operating out of Sitka and the Southeast area, but a lot less protection for vessels that operated in the Western Gulf, small vessels there. That was probably unfair. To now all of a sudden cloak ourselves in some sort of a fairness doctrine I find to be amusing, at worst.

Tillion: If Dr. Pereyra would be so kind as to make a motion to make it just as tough in the Western Gulf as it was in the Eastern Gulf, I'd be pleased to support him.

Lauber: We have one Pereyra motion on the floor right now. One at a time.

Mace: Speaking of that motion, it refers to the AP recommendation, and I think that we should have that verbalized, if that's what we're going to be voting on, have the Executive Director read that motion specifically.

Pautzke: It's that the AP recommends that a federal permit requirement be added to the license limitation eligibility requirements during the endorsement qualifying period.

Benton: I need to respond, I believe, to Mr. Pennoyer's question earlier. I guess, Steve, the overall intent here is of course to reduce the number of vessels and to reduce capacity. And in this regard, at least this...and by staff's own acknowledgment 90% of these or greater, of the vessels we'd be discussing will be 58 foot or lower. We do not know, given the status of the data, how many of those solely made landings in state waters, clearly some of them made landings in state and federal waters, probably the bulk of them. There may be a sizeable number of small vessels though that did make landings just in state waters, and that gets to the fairness issue of changing their status at this late date, when all along the Council has recognized, and the Secretary has approved, restrictive measures that limited access in the fisheries and were intended to reduce capacity that recognize state landings and awarded quota shares, property rights on fish stocks, to those individuals based on a quota share coming out of state landings in state waters. It is inconsistent and unfair, in my mind, to now try and preclude other people who have been playing by those same rules from receiving that license so that they could continue to operate in the way that they want to operate. Yes, you're correct, they probably could continue to operate in state waters, but the point is, that if, as I think it was Mr. Tillion was pointing out, what do they do if once the license program goes into effect and they are unable to move, maybe you say, even out to four or five miles and to harvest resources out there because they are now precluded from doing that and all the TAC is going to vessels that are outside that boundary. I mean it's going to set up a situation where those people are precluded from the fishery that they normally have participated in. And I think that that is certainly a concern, and something that we have to be cognizant of. With regard to Dr. Pereyra's remark, I would just point out yet again, that all we are doing is clarifying the rules, and those rules apply equally to all folks. And maybe the rules are different in different instances, and I think there are good rationales for those rules to be different in different instances, but nonetheless, the rules will be the rules, and they will be applied equally to people from anywhere in the country. And those are the rules, if they are adopted by the Secretary. If we were making the rules not apply equally, then I would agree with him and I would be the first to say that we have made a terrible mistake. We are applying...we are developing rules, and then those rules are going to be applied equally. And I guess with that I'll...

Pereyra: Question.

Lauber: Ready for the question? I think we'd better call the roll on this one. I've pushed my luck as far as I can go.

Benton: Could we read the motion first though please.

Pautzke: The motion is to accept the AP recommendation for the federal permit requirement during the endorsement qualifying period.

Pereyra: Which is...

Lauber: If you vote yes, you're voting...

Pautzke: If you vote yes...

Pennoyer: Mr. Chairman, you've closed discussion on it then? I had one other, I had one additional question.

Lauber: Oh, no, no, no. It's always open until we starting taking votes. Go ahead.

Pennoyer: I had one additional question and comment then. I understand what you said about the IFQ program, although currently we're proceeding as though the historical fishery in state waters takes place regardless of what we've done under the quota shares, and that's still to be worked out. So I don't know that we've set a precedent one way or the other in the way we've handled it in any final sense. But regardless of that, I hear the discussion about seasons might be set at times when people couldn't move in and out, and I hear there are some exemptions, I haven't looked at the troll regulations, but there may be something there, and ling cod, as you mentioned, I don't think is included in the groundfish regs, so I'm not sure how that...Anyway, there probably are exemptions. I don't know that I envision the Council moving seasons around so people don't have access, but I guess that could happen, so I think that's a point. The other point you seem to be bringing up is that past practice may have been that people were fishing, quote, illegally; by fishing inside and outside state waters without getting a federal groundfish permit. And given the line is blurred, I'm not sure that that's probably an illogical assumption. We have had trouble distinguishing in the landings, so, that may have occurred and maybe you want to take that into account. I'm not clear what....what I wanted to get on the record was not just that you wanted to be consistent, but the rationale, and I've heard one from Mr. Tillion, Ms. Behnken. So is part of the thrust of this the fact that people have been fishing in both places and your concern is that that may not be taken into account? Actual practice.

Tillion: I'm not saying they have been fishing in both places, Mr. Pennoyer, I'm just saying that those that have a federal permit have no restriction about moving in, and do so at this time when the resource is that close. You know from your years in the business that it merely takes a temperature change or anything else and the resource might not always be where it is today. And therefore if we're allowing those who have a federal permit to move into state waters when the fish have moved in, it's necessary that we have other boats that are dependent on this be able to move out at such times as the resource has moved out. We're still talking about fishing on the same resource under a TAC that we have set. Don't penalize this group.

Behnken: I think actually, part of the answer to your question is, yes, there are vessels that have been fishing both sides, and it may not be showing up on federal licenses because with the salmon fleet, the catch report follows where the bulk of the salmon was caught, and the groundfish are recorded sort of pursuant to that, and some of that groundfish is coming outside three miles and some is inside. I mean, the troll fleet's going back and forth across the line all the time; no one pays attention to a three mile line, you're following fish. So I think part of the answer to your question is yes. I think the other part that Mr. Tillion raised about the Pacific cod fleet is that you have a fleet that's again followed the fish, and during that EQP, which is all we have required of some vessels

under 60 feet, their participation may have been inside three miles because that might have been where the fish were. But you know, in another year, when this season's at a different time or the fish happen to be out farther, the fleet wouldn't be inside that three mile line.

Pautzke: I was just going to mention, it seems to me that considering what Mr. Tillion was talking about as far as the stocks moving in and out, that allowing those vessels to have, to be able to have licenses, is consistent with national standard three, which is managing the stock throughout its range. I mean, it is the same stock going in and outside three miles. It seems to me there is a consistency argument there with national standard three.

Benton: Mr. Pennoyer raised the sablefish fishery and in fact, I think...and the IFQ program, and I think in many ways that's a very good example of what we are talking about in that instance. A program that was intended to reduce capacity, recognized landings inside state waters, provided a right to fish, you know, in the form of an IFQ, from those landings, and that that right to fish transfers out to the EEZ. And in fact, we find ourselves in a situation right now where, you know, where that right that is transferred out into the EEZ is also being exercised inside state waters. But what we have done is we have also seen a situation where individuals fishing in state waters, at least this last year, without an IFQ, were operating a fishery. And that fishery was still within the TAC, although we...and you're right, we have to work out and resolve those issues. But the important thing is that the Council and the Secretary awarded those rights based on landings in state waters, and those rights have subsequently moved primarily off into the EEZ, those people are operating out there. And I think that this is right along the same lines.

Lauber: Any other questions? Can someone...I have a question. If we have two situations with a federal vessel licensing program which would have required you to have a permit, and then we have...that would mean we'd have a group of vessels that are not eligible for that permit in state waters, and obviously that fishery is operating as we've mentioned, on the same fish, followed all the same rules, fished on the same TAC, and so forth. Is there a situation where we have one limited entry vessel licensing program, but then fishing on those stocks of fish, again following all of our rules, the potential for other vessels to now enter state waters exempt from our vessel licensing program? Don't we stand a chance of some of them finding a loophole and flooding that inside three mile fishery? I see Mr. Meyer back there bobbing for...it might be quite the case that we're opening one hell of a loophole here by not putting everybody under the same rules?

Pennoyer: Mr. Chairman, what you're doing doesn't change that. What you're doing allows still unlimited entry into state waters, just allows state water permits to be sold for additional federal permits. Your proposal doesn't in any way limit anybody fishing in state waters to having a federal groundfish permit, even if you let everybody have a federal groundfish permit. State waters are still open to access.

Lauber: We'd better take care of that situation. Yes.

Benton: Mr. Chairman, but what this does do is...I mean, no matter what, the number of licenses that are going to be available and operable inside federal waters is capped, and it's capped at the number that we've been looking at. And this will not result in any capacity increase in federal waters, it just recognizes...and deals with, I think, the fairness issue and the consistency issue, and in many ways, I think, a conservation issue that needs to be addressed. [change to tape 56] And if we did otherwise, I think you would see a situation where probably we may have increased pressure...alright, I'll shut up...increased pressure in state waters because those people that would be more restricted in how they could operate, or at least there may be the perception they'd be more restricted in how they could operate, and certainly they would be precluded in the future from operating in a way that they normally would have been without...

Lauber: I could see a situation where you could make a case for not allowing vessels in state waters to get a vessel license if the state had been operating separate and distinct, in other words, not following our rules, you know,

TACs, reporting everything, all the numbers being together. Really for all practical purposes, for our purpose, it's been operated as one fishery. If that had not been the case, and it had been two separate entities, I think I would be inclined to say, O.K. we could have a federal permit and let the state do what they want. But when it's been virtually indistinguishable, I mean, the same fish, the same TACs, we've cranked in all the numbers through the whole process that we've done all this, you know, I can't see any distinction. And as far as I know, just because you fish in a state, you don't give up your rights as a United States citizen, so it doesn't wash with me that we...I don't see how we can do anything else but grant them a license. Yes Counselor.

Lindeman: Mr. Chairman, the fact is though, under the Magnuson Act the Secretary's authority extends in the EEZ only, and so you know, the Council and the Secretary aren't managing the fisheries in state waters. And even though they might calculate TAC on stocks in the state as well as federal waters, the state still has, you know, its authority in state waters, and so if a fishery is closed in federal waters, it's not automatically closed in state waters, it's under agreement with the state and the state has its separate authority.

Lauber: I understand that, and that's what I'm saying. If it hadn't been...but the way it's been operating, it's virtually indistinguishable from, for our purposes, from it being, quite frankly, as though it was before 1959 and it was a territory. It really doesn't make any difference for our purpose. I realize there is a distinction. But the way we've handled that fishery, and it's been a cooperative agreement between the state and the federal government, or whatever, it's all operated, you know...I'm not going to repeat it, we've heard this all, it's just indistinguishable.

Pereyra: Mr. Chairman, I think it's not correct, the previous respondent, saying that in fact by allowing vessels which had never fished in federal waters and had only fished in state waters, to give them a federal permit, that this would not increase, potentially increase effort. It will. It will increase effort. Either those vessels then deciding at some point in the future due to pressures in whatever area, to go out and fish in federal waters on the same species, or fish on different species which do not occur inside state waters. There are a number of groundfish species out there that do not occur in state waters, to which these vessels would then have the opportunity to fish on. So in my mind, it definitely would increase effort. Now we've gone in our license plan to great lengths to restrict the movement of vessels between crab and groundfish, and to restrict them between the Bering Sea and the Gulf of Alaska, and to restrict them between different areas within the Gulf of Alaska based upon their landing history in these particular zones. In this case here, we're not doing that. We're saying that even though a person would have no experience, no landing at all in federal waters, we're going to go ahead and give him a license to move into that area, and I think that's inconsistent with the whole tenet of the license program. So I think this motion and the way in which the AP came to an understanding is correct. And I'll note that the AP...it wasn't a close vote, it was a fairly overwhelming vote on the part of the AP, so I think it's the right thing for the Council to do and I would hope that this motion could be supported.

Mace: Mr. Chairman, I respectfully suggest that we've had adequate expression of opinions on this. We've covered four of eight issues since 8:00 this morning, and if we're going to get on with our business, I suggest that we vote on this issue.

Pereyra: Question.

Lauber: There's been no objection to that. Call the roll. Voting on Dr. Pereyra's motion to require federal permits.

Benton: Excuse me, before we go again...if we vote yes on this we're moving Dr. Pereyra's...the AP motion.

Lauber: That's right.

David Benton: No.
David Fluharty: Yes.
Robert Mace: Yes.
Kevin O'Leary: No.
Steve Pennoyer: Yes.
Walter Pereyra: Yes.
Robin Samuelson: No.
Clem Tillion: No.
Morris Barker: Yes.
Linda Behnken: No.
Richard Lauber: No.

Pautzke: Failed.

Benton: Mr. Chairman, I would move that we include landings from state waters being qualifications for receiving a license under the license program.

Behnken: Second.

Pennoyer: Mr. Chairman, you already have, I believe, so...

Benton: Oh, if I don't have to change it...no, it's fine. Never mind, I withdraw it. I do have a question though in this regard, Mr. Chairman. In going through this debate, it just brings to mind to me two questions. And I don't need an answer on it immediately, but I would think that it might be useful for the Agency to reflect on this and maybe bring us an answer at some future time. And that is, one, are we going to then revisit the allocation of sablefish IFQs with regard to withdrawing and taking out of the consideration of allocation of sablefish IFQs those landings made in state waters and bring that program back before the Council and deal with that issue? And the second one is, as we're considering the pollock IFQ program, then I would assume that we are not going to record landings of pollock or any associated PSCs that come out of state waters as qualifications under that IFQ program. And I don't want an answer to that right now, but I would like to have an answer to that at some point. Well we haven't done that yet, I understand that.

Pereyra: But here, here you've just...

Tillion: Leave the sleeping dog lie.

Pereyra: Here you've just said that everything is going to be amalgamated, and now you're saying that they shouldn't be? That's really inconsistent.

Benton: I just, well, no, I just want to know what the question...I just wanted an answer to that question because we may come back to that issue.

Lauber: O.K. Let's move on. Did you have something to say Mr. Samuelson?

Robin Samuelson: Yeah, thank you Mr. Chairman. I'd like a report from the state on how they're going to manage the groundfish fisheries in state waters. We heard testimony yesterday, and we asked Chris Blackburn about the stock I.D. work, identification in Prince William Sound where a fishery took place. And I haven't seen any reports from the state on how they are going to manage their groundfish fisheries, who they all anticipate that's going to be in that fishery. So hopefully by December, or shortly thereafter, we'll get a report to see how the state's going to manage their fishery.

Benton: Yeah, I think that's a very good suggestion.

Lauber: O.K. We're done with that item and we move on to differential landing requirements by area for endorsements.

John : Mr. Chairman. Just a quick issue. This was brought up in the letter from Dr. Pennoyer to yourself, and this is the issue on having differing landing requirements in the Bering Sea as opposed to the Gulf of Alaska, and also differing landing requirements from the Eastern and Central Gulf and the Western Gulf. And essentially, what the Agency is looking for is a clarification of these issues and some type of rationale.

Benton: Well, Mr. Chairman, I think we discussed a lot of this...well, I know we discussed a lot of this over the course of several meetings; the differential landing requirements between vessel size categories, between catcher and catcher/processor, and between areas, and that the record on that in June is very extensive, and from the meetings previous to that. The analysis looked at, I can't remember the number of permutations that Marcus calculated this out to be, but there was at least several hundred different permutations of different landings requirements and configurations that were analyzed, discussed, considered by the Council. I think it would not be productive to spend days going back and re-reading into the record the same record, but I would say that I have read that record, I have thought about it, we all helped build that record over several days, and I think that that record is fairly, fairly extensive. The issue perhaps that is...well there's two issues that perhaps do need some clarification, in my mind at least. One that has received considerable debate is the difference between the Western and Central Gulf. And the second one is a...what I believe is probably an error in the newsletter, the version of what came out in the newsletter and what was intended by the Council at the June meeting with regard to the relaxation of that landing requirement for the Western Gulf. And I think I'll speak to the second one first. The newsletter would have as a landing requirement for the vessels 60 to 124, one landing in the EQP, and the newsletter applied that both to catcher vessels and to catcher/processor vessels. And I went back, when I saw that I wondered about that, and I went back and found the motion that was before us on the morning that we were dealing with this, and I went back and reviewed the record. And the motion that was before us, and I'll read it, was...and this is landings requirements in the Gulf of Alaska, and the last sentence read, for the Western Gulf use the above, except that catcher vessels which are greater than or equal to 60 feet and less than 125 feet, underline catcher vessels, need only make one landing between 1/1/95 and 6/15/95. That's what the written, typed sentence was. The record on this, among other things, had Mr. Mace in dialogue with Marcus, correcting that 1/1/95 date to a 1/1/92 date to make it consistent, and Marcus' response was yes, that was a typo, can you believe it? And given the work load, I think we all could believe that that certainly was a typo. And then we voted on that and passed that particular motion. And my recollection was of that, that the intent of the Council with regard to this landing requirement for the 60 to 125 foot category, one landing would only apply to catcher vessels and the other requirements would have applied to catcher/processors, which was the two of four, or four between 1/1/95 and 6/15/95, I believe is how that worked. So that issue is one that I believe just needs to be clarified. I think it was simply a, you know, matter of mis-reporting in the newsletter, so I don't see that as being a big issue. And I'd look at, I think that the genesis of the one landing requirement came from Mr. Mace and Ms. Behnken, and I think I've got this correct.

Mace: I concur with Mr. Benton's interpretation. It was for catcher vessels. We did correct the date, as I recall, and after a great deal of testimony at the June meeting I feel that the record is sound, and I for one want to hang with those decisions.

Lauber: Any further discussion on this issue? O.K. Then why don't we take a break. Let's make it relatively short, maybe no longer than 15 minutes.

Lauber: Can we have quiet out there please.

Lepore: Mr. Chairman, I guess that speaking with Mr. Benton, he said that there was one other issue he wanted to clarify before we move into the overlap. Is that correct?

Benton: Well, Mr. Chairman, Mr. Pennoyer has asked that we at least re-emphasize the record on landings requirements generally, and some of the other requirements. And I am prepared to speak to that. But before I do, and I don't want to open this issue back up, but I do want to say something for the record with regard to this issue over state licenses and state waters. And that is that...and Mr. Robinson...Nielsen sort of alluded to it, and that is that the state recognizes that there will be a need to address groundfish management in state waters, and that very well may lead to...I can't predict this for sure because there's a whole range of regulatory matters that would have to be addressed, but that may lead to a limit access program inside state waters as well, and certainly, that if the worst scenario envisioned by Dr. Pereyra looked like it was unfolding in state waters, the federal government always has the opportunity to pre-empt fisheries in state waters and to take care of that problem, if indeed it is going to cause a conservation problem for those resources. And the only reason I'm saying that is that this isn't...not to open the issue back up, but to at least identify that there are mechanisms for addressing that problem over and above the things that we've talked about here.

Pereyra: Mr. Chairman.

Lauber: O.K. That's one, and that's one, and then...

Tillion: Let's get out of this. We're debating after the vote.

Pereyra: No, this is not after the vote, this is sort of leading up to December I think. And a question was raised in my mind by someone else as to how the state will manage the fisheries in Prince William Sound, particularly the pollock fisheries?

Benton: I'm sorry, I was thinking, but would you repeat your question?

Pereyra: Well, the fishery in Prince William Sound, it's in state waters, pollock for example, Prince William Sound, how are you going to manage that?

Benton: Well, there was a fishery that was conducted as an experimental fishery, as you know, and I think that matter is going to come up before the Board in terms of whether or not there would be any continuation as a regular fishery. I can't answer that right now, it's sort of a Board decision as to how that's going to go.

Lauber: O.K. That's enough. Now you have an issue on overlap.

Benton: Well, Mr. Chairman, I think we need to speak first to the general issue of landings requirements.

Lauber: Is that...what was it you asked? I thought you told me we had one more issue on this...on the issue that we were on when I recessed.

Lepore: That is correct Mr. Chairman, but Mr. Benton brought up two issues before, and I guess he addressed only the second issue, which was the error in the newsletter. There's still the issue of the differential between the Western and Central Gulf. Is that...

Benton: There are those issues, and also as Mr. Pennoyer requested, he wanted to at least have some discussion here of the rationale for some of the other requirements that were in the program as I understood.

Pennoyer: Yeah, landing differentials I think is what we talked about.

Lauber: Well, that's the next item on the agenda, isn't it? No?

Pennoyer: Item two.

Lepore: We're still on item two.

Benton: We're on item two, Mr. Chairman. They're all under item two.

Lauber: O.K. Fine, go. Ms. Behnken.

Behnken: Thank you Mr. Chairman, I'll start on that. And I think this is something we did talk about quite a bit previously, or at our June meeting. It was a difficult issue to resolve. But we did hear some good testimony that I found compelling anyway, that supported what we did. And that is, that during that EQP there were a number of concurrent seasons between the Bering Sea and the Gulf...or Western Gulf with pollock, which meant vessels had to fish one or the other side of the chain. There was also a problem with stocks in the Western Gulf during some of those years, and some vessels chose not to fish for conservation reasons. In effect, that shortened the EQP for vessels out there. There was also indications that it's a somewhat less stable environment because of regulatory changes, because of market conditions, because there's less processors, from the Central Gulf or the Southeast area, that led us to make those decisions. I'm hoping that some of the clarifications we've already done today with regards to the catcher/processors in that area and also crossovers, will alleviate the concerns of some of the people in the Western Gulf that testified to us about those differences.

Benton: I think that Mr. Pennoyer's question really was broader than just the Western Gulf issue, and he wanted a general discussion about the differential landings requirements across most all the areas, and some of the reasoning behind that. And I think as I pointed out, the record that was developed in June and prior to June, and the analysis that was developed about the different options that were considered, they are a matter of record. I think they are fairly extensive, but I can perhaps recap some of the high points of those, as well as I can remember them today. So I guess that I would start that off by noting that what we've done is, we have provided differential landing requirements for different sub-areas within the different FMP areas. And I think that the general underlying theme there is that there are different operational characteristics in the fisheries, those are different geographical areas, the fisheries are operated differently, the social and economic conditions that affect those fisheries are different within different areas as you go around the coast. There are similarities between areas and there are differences between areas. And if you look at sort of the range as you go around the coast, you see that for example, in the Eastern Gulf, the provisions that relate to Eastern Gulf qualifications recognize that that area is dominated by a small boat fleet that's located in pretty sparse coastal communities, that that fishery is by and large a fishery that is...that those communities are very dependent upon, and that those fleets are very dependant upon. And so the requirements in the Eastern Gulf are designed, in my view, to promote the stability of those fisheries and to ensure that pre-emption problems and similar kinds of problems that were identified by this Council through the course of the CRP process were addressed. And landings requirements, in particular I believe, were designed to do that and were, along with the trawl provisions, or the fixed gear provisions, a recognition of the overwhelming nature of the fleet and the fisheries that occur in the Eastern Gulf. So the Eastern Gulf generally has probably the most restrictive provisions of any of the areas. That also reflects sort of the historical development of that fishery. Those fisheries have been by and large, fully developed for quite a long time. You move up into the Central Gulf and the nature of the fleet and the nature of the fisheries changes to some degree. A little bit bigger water. More distant water fishing goes on out of Kodiak, for example, obviously it's one of the more powerful fishing ports in Alaska. Those fleets range further afield. The fisheries, however, right around the Central Gulf also have a large component of small vessels that are based in the local communities and that are dependent on those fisheries. And the competition in those fisheries is pretty aggressive right now, and witness some of the short seasons and openings that occur there. I think that helps to clarify that. There is a strong trawl component there, and I think that, so you know, a fixed gear only requirement obviously doesn't

work in the Central Gulf, like it doesn't work really anywhere else. If you look at the landings requirements, they are generally the same, however, with the Eastern Gulf because of the nature of the communities, and I think, the nature of the fleet. You move into the Western Gulf, and the Western Gulf is sort of a difficult area. The Western Gulf is a transitional area between the Bering Sea and the rest of the Gulf of Alaska. There is a local fleet there, it's composed of small vessels. Many of those small vessels did not actively participate in the fisheries in the earlier parts of the qualifying periods. We heard substantial testimony about the unique situation that caused that. I think the Council tried to address that issue in a number of ways with some of the landings requirements for smaller vessels to afford those individuals that got into those fisheries an opportunity. But nonetheless, the Council also, I believe, recognized that the Western Gulf is closely akin, in many ways, to fisheries in the Bering Sea, and that there is a transitional nature to the Western Gulf. And indeed, we heard testimony even this week again reiterating that characteristic in the Western Gulf. The landings requirements, and we've already clarified this for catcher vessels, were somewhat in the mid-range category were somewhat relaxed from the Central Gulf in recognition of that characteristic. The landings requirements, however, for catcher/processors were more akin to the rest of the Gulf because of concerns regarding the fishing power that catcher/processors have versus catcher vessels and the implications that would have overall for the fisheries and management of those fisheries. We had quite an extensive discussion about this issue, I believe, in June...the difference between catching capacity in various size categories of catcher vessels, and then also the true difference between catcher/processors and catcher vessels. And in fact, we had a fairly good analysis provided to us by Joe Terry in that regard, that demonstrated that there is a differential in capacity, and then subsequent impacts on the fisheries and on the fleets. The Western Gulf issue is a difficult issue, and I know that the Council struggled with this quite a bit in June. I know there's a lot of concern from folks in the audience from the Sand Point area about the implications of this for their area. I don't believe, myself, that it is going to be major, have a major impact in terms of their overall fishing ability, because I believe the issues that we have addressed today regarding catcher/processors and crossovers helps to address some of those concerns, perhaps not all of them, but certainly some of them, and I think the bulk of them. You move up into the Bering Sea, and the development of the Bering Sea fishery is considerably different than certainly the Central Gulf and the Eastern Gulf, and to some degree different than even the Western Gulf in that that fishery was the one that was dominated by foreign interests for the longest. It is a distant water fishery, the vast bulk of it large vessels in an industrial fishery that developed late in the ball game, so to speak. And I think that the landings requirements and differential there that was provided for the Bering Sea fits with the characteristics of that fishery, both in the way it developed and then also in the way it is currently operating. It recognizes that distant water nature, the recent entrance that has occurred into that fishery, and tries to accommodate that. So the landings requirements there are perhaps the most liberal in the sense of allowing vessels that have participated in that fishery, that have met these...that have participated both in terms of the moratorium and [change to tape 57--words are missing between tapes] I think I'll stop there, and I'll look at Mr. Pennoyer and see if I have answered Mr. Pennoyer's question. That is the Reader's Digest summary of what I recall from the record.

Lauber: In my experience, it's never enough. [Laughter]

Benton: I figure you've got to get down to specifics...

Pennoyer: Based on that comment Mr. Chairman and the need to get out of here, I probably shouldn't say anything. I will ask one other question though. And we've heard that since the June meeting there was additional information on increased effort and additional vessels, and would you comment on that? There was some discussion of the fact that the one landing requirement in the Western Gulf of Alaska brought vessels in that weren't on the record at the time of the discussion. I don't know if it changes the view at all because I hear what you're saying about the rationale.

Benton: Certainly. Mr. Chairman.

Lauber: Mr. Pereyra...or Mr. Benton.

Benton: Thank you Mr. Chairman. I think you've paid me an ultimate compliment by calling me Dr. Pereyra for a moment. I got promoted to commissioner the other day, and now I'm a Dr. you know.

Tillion: It is the Dr., but think what you did to Pereyra. [Laughter]

Benton: That's probably true. Well, the first thing I think is most important to recognize and acknowledge is that the Council has to use the best information available to it at the time it's making a decision. And indeed, that's what happened in June. The Council had before it, I think an extremely complex and detailed set of data, and certainly had the best information we could have regarding 1995 at the time. Now then, we were attempting to address recent participation issues, and we were operating under some constraints with regards to data because not all of the data was available at the time that we were making the decision, but we had a good sense of the matter of what the implications for different decisions were. It wasn't that, in my view, that what might be a lack of precision in data resulted in something that would be an order of magnitude larger and sufficient than to warrant completely a different decision. Certainly it was sufficient information, in my mind, and I think in the rest of the Council's mind, to make a decision...to base a decision on. Subsequent to that time, we have received information about some differences in the data that we had available to us. I do not believe that that data, in and of itself, constitutes...and again, an order of magnitude difference that would require a revision of the program in and of itself. And I also believe that we have addressed, as I stated previously, a number of the concerns that might have arisen from that data by addressing, through clarifications, some of these other measures that directly affected, I think, the Western Gulf issue in particular, and specifically the crossovers and the catcher/processor issue at the Western Gulf endorsement qualifying period.

Pereyra: I'll try not to be as long as Mr. Benton, but in general I can agree with most of the points that Mr. Benton makes, with the slight exception with the reasons for handling landing requirements, particularly in the Gulf of Alaska for factory trawlers and catcher boats differently. That particular issue, as I recall, was supposedly handled to a large degree with inshore-offshore. We excluded factory trawlers entirely from pollock and greatly restricted them in the case of cod fish. So that having further restrictions, I think, is a little bit clouded in terms of what the intent is and what the need for it is. So I would just like to add that to the record, for what it's worth.

Benton: I concur with, at least in part, with what Mr. Pereyra said. And I would like to note that the new data that we might receive subsequently from...as data becomes available for 1995, that's going to generally change numbers across the board, and that those changes, I believe, because they are across the board, are not going to be significant in any one particular instance. What it does is, it just sort of makes the data resolution better, but I don't believe it's...because it is across the board, that it will warrant changing any particular provision because, you know, it applies equally across all areas in many ways.

Lauber: Is there further comments on this issue? O.K. Now where?

Lepore: O.K. Mr. Chairman, if you would bear with me. Please excuse the format, but I think it will clearly illustrate the issue we have on the overlap. Essentially, if we would look at the second and third lines. The first line shows the moratorium period. The second line shows the license limitation program general qualification period which runs from 1/1/88 to 6/27/92. The third line, which is the endorsement qualification period for the license limitation program, begins on 1/1/92 and extends to 6/17/95, and this is for groundfish. What we have is an overlap period between 1/1/92 and 6/27/92. During that overlap period, there is the possibility of making a single landing, and essentially qualifying for a license. And this would occur, like in the Bering Sea area. This would be different than a person who would have to make a separate landing in the general qualification period and the endorsement qualification period if they did not fish in that window of time. So we just needed some clarification on that issue, and justification.

Behnken: I think...or my understanding of this is that your interpretation is correct, we do have this little window that's kind of a window of opportunity, if you will. But the way I see it is that the Council developed a double criteria for qualifying, and that's for Magnuson...historic participation and current. And we used a GQP for one and the EQP for the other. But in fact, historic and current participation is a continuum, and that's where we ended up with that overlap. I guess to me, that's one way to look at it. The other way to look at it is that if we had picked anything other than a calendar year to begin our EQP, we would have then created an inequity in effect, because some fisheries would have started right on the first day of the year, say you know, before June or after February, you know, depending on which of these sort of moratorium dates you looked at. And by picking the beginning of a calendar year we were evenhanded. So if you look at the alternative, it wouldn't have made much sense, rather than to use a calendar year as we did. So to me that's the rationale for the way we set up those periods.

Pereyra: Mr. Chairman, as I understand it, the federal notice said that we might use 2/9/92 as the cut off date, but it didn't require that we use 2/9/92. That in fact, it gave us the opportunity to be less restrictive if we so wanted. So I look upon the GQP dates as really being the controlling dates. And that whether or not the vessel is moratorium qualified or not really is immaterial, because that was mainly an interim situation. And maybe General Counsel or Mr. Pennoyer could correct me if my interpretation is wrong.

Pennoyer: I'm sorry Wally, the overlap period being discussed is 1/1/92 to 6/27/92 and you've gone back to the 2/9/92? I'm not sure of your question.

Pereyra: Well a vessel could be non-moratorium qualified, but be qualified for a license.

Pennoyer: Right.

Pereyra: And I don't see that as being necessarily inconsistent, because in the moratorium we recognize that as being a temporary, interim sort of, you know, hold the line until we decide what we're going to do. And we essentially couldn't be more restrictive than 2/9/92 unless we had some really compelling reason, I suppose, from a legal standpoint. But we can certainly be more liberal, if we so chose. And that's really what we've done here. We've chose a date that's slightly beyond the moratorium cutoff date, and I don't see that as being inconsistent with what we might do.

Pennoyer: Mr. Chairman, I agree with you. John, does that solve the inconsistency that could occur between two vessels?

Lepore: Yes.

Pennoyer: The explanation? I thought so. Thank you.

Benton: Mr. Chairman, I would just add to that that generally speaking, especially with regard to the Bering Sea, that the analysis that we had before us showed that the only way to really accomplish significant reductions in the numbers of large vessels where the capacity problem existed would have required very draconian measures. And that was an explicit...I mean it was in the analysis, and you would have had to have had very draconian landings requirements or other measures, and the Council, I think, in recognition of the difference in that fishery, the recent development, and the other issues that I raised earlier, made the decision not to go that route. And that so this overlap period, really the differential that occurs because of this overlap really does not affect the capacity issue.

Lauber: O.K. Anything further under this?

Lepore: No, I believe that that justification would also work for the second issue that we brought up also. So I think that that clears up the differential.

Lauber: Alright then, does that take care of item two? Can we move to three then, vessel upgrades, consistency with moratorium size categories. Yes, could you explain that to us.

Lepore: Mr. Chairman, this was essentially just an issue of clarification. It wasn't...we really didn't need any justification on this issue, we just wanted to make sure that our understanding of what the Council did is consistent. And that is the situation where a vessel could upgrade under the moratorium rules and still not qualify to receive a license in the vessel class that it would qualify under the license limitation. And we went over that example before when we were going through the staff reports, and essentially would be a vessel that under the moratorium was 58 feet, could extend under the 20% rule to 70 feet. In that situation they would not qualify under the vessel class under license limitation, which would be 60 feet or below. And we just wanted to make it clear on the record that in that situation, the person who would receive a license would need to obtain a vessel in the proper vessel class before they would be able to fish.

Lauber: O.K. [Many people whispering, talking amongst themselves.]

O'Leary: Mr. Chairman, I think we discussed that, and my recollection, well of course I wasn't here when you discussed it, but I believe the way it ought to be interpreted, let me put it this way, is that if a person qualifies for a license in the 58 foot class, and then subsequently under the 20% rule decides to upgrade to 70 plus feet, that person has the right to upgrade to the limit of the class, whatever it is. If they exceed the limit of the class under that 20%, if they exceed the limit of the class, then it seems logical to me that they would have to sell the lower class license that they currently hold and have to purchase the larger class license. And that seems like a reasonable thing to do under the circumstances, and I would suggest that that be the case in the way it's interpreted.

Lepore: That accurately reflects what this is, so...

Lauber: Right, and we have...that's consistent with our upgrade rules, whatever.

Pereyra: But Mr. Chairman, would it be correct that they would be allowed to cure, in this case by cutting ten feet off their boat if they so chose so that they would...

[Several people talking.] Yeah, yeah, sure, sure.

Benton: I concur with that.

Lauber: Mr. Pennoyer's getting an amusing picture or something. [Laughter]

Pennoyer: Well, I don't know if he's going to cut it off the bow of Wally's boat or the stern...take it from the middle Wally and I'll give you any glue...

O'Leary: A lot of little snub nosed boats running around.

Lauber: Or out of the middle. Well, we've seen some rather odd looking vessels, that I suspect were for that reason.

Pennoyer: John, on the next issue is four CDQ issues, and the first one is management of multi-species allocations. We discussed that and I think we had clarification of what was intended already.

Benton: Just a question of John real quick. Now we're done with number three here?

Lepore: Yes.

Benton: O.K. Fine. I just wanted to make sure.

Lauber: Now are we moving to CDQ issues.

Pennoyer: O.K. Mr. Chairman, CDQ issues. John, we discussed management of multi-species allocations and the difficulties and problems, those are something that has to come in the implementation discussion in the rule, so I don't know if we need to do any more of that here?

Lepore: I agree, Mr. Pennoyer, I believe that we did discuss this issue. It was also brought up under public testimony, so I don't think we need further clarification. We do need to sit down and talk about this issue with the state.

Benton: Mr. Chairman, I appreciate that suggestion, obviously. Either great or feeble minds think along the same lines, because I was thinking about this over the intervening period since we had that discussion. And I think that what the Department will do is, we will convene some kind of working group between National Marine Fisheries Service, ourselves, and the CDQ groups, to sit down and try and resolve how these things might work and come up with an appropriate approach. And I think, you know, we'd do that over the intervening period here, at some point.

Pennoyer: Fine. Thank you. Mr. Chairman, the other item was inclusion of pollock CDQs in a license program, and that's simply a clear expression of your intent as to how that was going to be handled.

Benton: Mr. Chairman, I think that the intent was quite clear from the beginning, at least in my mind, and that intent is that the pollock CDQs would not be included in the license program. They're included under inshore-offshore and that was, I think, an express decision that the Council had made.

Lauber: Agree. That's Council concurrence?

Pereyra: Yeah. I think that whatever we do when we discuss here, I don't think it should have a major bearing on how we handle CDQ history in the ITQ program because this is going to be a whole another issue that we're going to have to discuss. And I don't want to have us having that somehow compromised because I think it's going to be a big discussion.

Benton: Mr. Chairman, I fully concur with what Dr. Pereyra is saying. All I'm saying is that CDQ...that pollock was not included in the license limitation CDQ program.

Pennoyer: Alright. That was the question.

Lauber: O.K. Now the last item, five?

Lepore: That's correct. This is an extension of the hardship provision issue. The first time we took this up, this was under number two when we were talking about the moratorium vessels and their inclusion under hardship. This second issue is a subsidiary of that. And essentially what happens is, under the language as it currently is under provision eight which was in the newsletter handout, it discussed the relaxation of landing requirements. And there was a little concern on the Agency's part, on how that exactly would occur. And maybe I'll give an example, and that will clarify the issue. If you had two vessels that had a similar history in the general

qualification period fishing in the Gulf of Alaska...let's make it the Central Gulf. These two vessels fished and qualified under the general qualification period. One vessel sinks, the other vessel does not sink. The vessel that sunk is immediately salvaged and brought back up. These two vessels then make a landing in the endorsement qualification period. Those two vessels leave the Gulf of Alaska and fish in some other fishery that's not included under license limitation. In that situation, the vessel that sunk and was immediately salvaged would qualify under the hardship provision because they made a single landing before 6/17/95. However, the vessel that fished right next to it and made one landing would not qualify because there is a two landing requirement. And we just wanted some clarification and justification why a vessel, if it could have qualified under the normal method, would get this relaxation of landing requirements.

Benton: Mr. Chairman, I'll take a crack at that. As I think I mentioned earlier when the Council in Dutch Harbor was considering hardships and vessel replacements, provision number eight really was intended to be a hardship provision, and was not intended to be a loophole. And you know, in my view Mr. Chairman, if a vessel could have received licenses for areas under the normal rules and was qualified in that regard, then that doesn't constitute a hardship. A hardship is an instance where a vessel was lost, the individual made every attempt to get back into the fishery or was, you know, trying to do that, and came in fairly late and because of the nature of the hardship wasn't able to qualify in these fisheries. And that was clearly, I think, our intention. Like for example, I'm looking at Mr. Pennoyer's letter. In that specific instance, what I see here is the difference between essential GOA and the Bering Sea, and this vessel that you used could have fished in a manner, given the years that you have here, such that they could have if they had wanted to, they could have qualified for just about anywhere that is around, and they did not. So clearly that's not a hardship instance. This provision, I believe, is truly intended to be a hardship, and I think that that's what our intention was.

Pereyra: Mr. Benton, what would happen with a vessel that sank, came back to life again, did not make a landing in the Western Gulf for example, but said you know, I really had every intention of doing it, but I just never got there, I mean I really just couldn't put it together. You had another vessel that didn't sink, he didn't really get it together again for other reasons and didn't make a landing in the Western Gulf. You deny him an endorsement. Would you give an endorsement to the other fellow?

Behnken: Mr. Chairman, if I'm understanding the example you're giving, neither of them will get it. You have to have made that landing before the 17th. And if you came back into the fishery, you know, in the beginning of the EQP and had plenty of time to make the multiple landing, then you have to do the multiple landings. But the situation you're giving, I think neither would.

Pereyra: O.K. But the situation where the vessel that had hardship, he delayed for whatever reason, a couple of years, and finally made a landing in the Western Gulf before the 17th. The other fellow who didn't sink, he never made a landing, he wouldn't get one.

Benton: What happened to him? I mean what was he doing?

Pereyra: He was fishing in the Central Gulf along with the other fellow that sank.

Benton: But he had the opportunity. He had every opportunity...

Pereyra: Well, the other guy did too. He was only down for a couple of days, and resurrected his boat and got it cleaned up. I mean, I'm just trying to see a situation where on one hand, you're treating the person who was able to make a landing by the 17th but had sank, differently than the person who was able to make a landing by the 17th and didn't sink. You're handling them differently.

Behnken: I don't think so.

Benton: I don't either, if I understand your example correctly.

Pereyra: Because the qualifying period...the qualifying period for a vessel that didn't sink is shorter than the 17th of June, 1995.

Benton: No, the cutoff is June 17th.

Pereyra: It is? I thought it was shorter than that.

Behnken: No, it's not, it's June 17th.

Pereyra: O.K. I apologize.

Lauber: Strike that.

Benton: So are you removing your question?

Pennoyer: John, so we're O.K. on number five then? That concludes our request then in term for clarification?

Lepore: Yes, it does. Thank you.

Lauber: O.K. Now...thank you very much for that. I believe we had agreed that we would take up observers and so forth at 1:00.

Pautzke: Mr. Chairman, you're aware that we've done the license part, but you still haven't come back to the ITQ part, so you're really not done with CRP unless you just don't want to do anything more on the next step.

[End of License Limitation Discussion]