


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: June 19, 1992

SUBJECT: Moratorium

ACTION REQUIRED

- (a) Review public comment and Moratorium Committee report on the EA/RIR.
- (b) Select a preferred alternative for Secretarial review.

BACKGROUND

In April 1992 the Council approved the Moratorium EA/RIR for public review. The Council is scheduled to take final action on the proposed vessel moratorium at this meeting. The problem statement, major elements, and options under consideration are provided for your reference as item C-1(a). The moratorium proposal contains a range of policy and management options--including the status quo--structured around major elements, rather than distinct alternatives. The Council will need to construct the preferred alternative from the elements and options as summarized in C-1(a).

NMFS attorney Jon Pollard has submitted an assessment of certain features contained in the elements and options under consideration by the Council (item C-1(b)). Public comments received on the moratorium analysis were mailed to you on June 12. The Moratorium Committee met in Seattle on June 11 to evaluate the options presented in the moratorium analysis, and to provide the Council with recommendations concerning the implementation of this plan. The Committee's report is included as item C-1(c).

If a preferred alternative is adopted at this meeting, the recommendation would be forwarded to the Secretary of Commerce for final approval. Assuming Secretarial approval, the moratorium could become effective at the beginning of the 1993 season.

OK w/ Jim
C, re
on 1990 date

PROPOSED ALTERNATIVES

In January 1992 the Council clarified its intent with the following statement: *In an effort to help achieve optimum yield, the objective of the proposed moratorium is to freeze the number of vessels in the groundfish, crab, and halibut fisheries under the Council's jurisdiction, with appropriate restrictions on allowable changes to those vessels which are permitted in these fisheries.* The Council intended, in establishing a control date for entry into the fisheries, to discourage speculative entry into the groundfish, crab, and halibut fisheries off Alaska while potential access control management regimes are developed and analyzed by the Council.

Moratorium Elements and Options

1. Qualifying Period

Beginning date:

- a. January 1, 1976
- b. January 1, 1980
- c. January 1, 1988

Ending date:

- d. The September 15, 1990 control date, with qualified extensions to January 15, 1992 (fixed gear), and February 9, 1992 (trawl) for vessels under construction, reconstruction, or under contract for construction, reconstruction, or purchase as of September 15, 1990
- e. February 9, 1992
- f. Upon adoption of the moratorium by the Council, presumably during the week of June 21, 1992.

These options define alternative periods of eligibility that would qualify vessels under the moratorium. The control date is that defined in the September 5, 1990 *Federal Register* notice, as modified by the Council. For purposes of analysis, any vessel making a landing by the extension of the control dates, as referenced in d, above, will be assumed as a valid, eligible entrant, although it is recognized that this will likely overstate the bona fide qualifiers under the extension criteria. Alternatively, the February 9, 1992 ending date (option e), covers essentially the same participation as option d, but all vessels making a landing by this date would qualify, regardless of prior contractual arrangements stipulated in option d.

2. Length of Moratorium

- a. Until Council rescinds or replaces; not to exceed 3 years from date of implementation, but Council may extend for 2 years if a permanent limited access program is imminent
- b. Until Council rescinds or replaces; not to exceed 4 years from date of implementation, but Council may extend for 2 years if a permanent limited access program is imminent
- c. Until Council rescinds or replaces; not to exceed 4 years from date of implementation

3. Crossovers During Moratorium

- a. No further restrictions are specified regarding the ability of a vessel to cross over from one fishery to another (groundfish, crab, or halibut) during the moratorium, regardless of past participation.

4. Replacement or Reconstruction of Vessels During the Moratorium

- a. A vessel may be replaced with a vessel of similar capacity, but the replaced vessel must leave the fishery. Reconstruction of vessels is allowed to upgrade safety, stability, or processing equipment, but not to increase fishing capacity. The intent of the Council is to freeze the number of vessels participating in the designated groundfish, crab, and halibut fisheries, and to allow for no increase in the capacity of existing vessels. The analysis will examine the alternative procedures for measuring and managing vessel capacity, and how appropriate restrictions might be implemented.

5. Replacement of Vessels Lost or Destroyed During the Moratorium

- a. Can be replaced with vessels of similar capacity. Replaced vessels cannot be salvaged and come back into the fishery.

6. Replacement of Vessels Lost or Destroyed Before the Moratorium

- a. Vessels lost since January 1, 1990 can be replaced with vessels of similar capacity. Replaced vessels cannot be salvaged and come back into the fishery
- b. Vessels lost since January 1, 1989 can be replaced with vessels of similar capacity. Replaced vessels cannot be salvaged and come back into the fishery

Eligible lost or destroyed vessels replaced under either criteria would have to make a landing in one of the Council-managed fisheries within two years of implementation of the moratorium in order to qualify.

7. Small Vessel Exemption

- a. No specific provisions are made that would exempt categorically small vessels from the moratorium. The analysis will assess the impacts of a moratorium on small vessel operators and their fishing activities.

8. Disadvantaged Communities

- a. There will be no exemption for disadvantaged communities from the vessel moratorium.
- b. Vessels used by disadvantaged communities would be exempt from the vessel moratorium only with respect to those fisheries designated by an applicable community development quota (CDQ).
- c. All vessels approved for CDQs would be exempt from the moratorium.

For purposes of analysis, the Council considers disadvantaged communities to include those communities receiving CDQs under the BSAI Amendment 18 Inshore/Offshore pollock allocation, and/or the halibut and sablefish fixed gear IFQ Amendments.

9. Minimum Qualifying Poundage

- a. No minimum qualifying poundage, all that is required is a legal landing or processing from one of the applicable groundfish, crab, or halibut fisheries in any qualifying year.

10. Applicable Sectors of the Industry

- a. The moratorium will be applied to the harvesting sector only, including catcher vessels and catcher-processor vessels in the designated groundfish, crab, and halibut fisheries

11. Appeals

- a. The appeals procedure will consist of an adjudication board of government persons and non-voting industry representatives

12. Halibut and Sablefish Fixed Gear Vessels

- a. There will be no exemption for halibut and sablefish fixed gear vessels
- b. Halibut and sablefish fixed gear operators that would come under the provisions of the proposed IFQ Amendment will be exempted from the vessel moratorium as it affects halibut and sablefish operations

The Status Quo Alternative

The other alternative represents the status quo, an option the Council legally must consider. This alternative also serves as the base or reference against which directed action to limit entry--as proposed in the moratorium--can be assessed. Given the dynamic nature of the fisheries under the Council's authority, it is likely that other regulatory and management actions may be undertaken that impact fishing effort and capacity outside the moratorium proposal. Thus, the "status quo" may change in the near future independent of directed action towards a moratorium. For example, the Council's consideration of sablefish and halibut fixed gear management plans may lead to regulatory changes that directly or indirectly influence entry into these fisheries. For purposes of this analysis, the primary feature of the status quo alternative is that a vessel moratorium would not be adopted, even though other developments affecting entry and capitalization may be occurring within the industry.




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**AGENDA C-1(b)
JUNE 1992**

May 15, 1992

MEMORANDUM FOR: Jay Ginter
Fisheries Biologist

FROM: Jon Pollard 
Attorney-Advisor

SUBJECT: Vessel Moratorium -- Comments on May 6 Draft
EA/RIR/IRFA

I think that this is a pretty good analysis. The document states that

open access conditions leading to excess [harvesting] capacity create several interrelated problems: These identified problem areas include allocation conflicts, excessive bycatch of non-target species, high grading or discard of lower valued but potentially useful fish products, poor handling of catch, insufficient attention to safety, economic instability, and reduced earnings by affected catcher and processor firms

(page 1-5). However, the document also states that the proposed moratorium *by itself* is unlikely to solve any of these problems. The purpose of the moratorium

would be to control continued growth in fishing capacity while the Council assesses alternative management proposals including, but not confined to, limited and open access measures to address the overcapacity problem, and to achieve the optimum yield (OY) from the fisheries

(page 1-6). The moratorium may prevent a "worsening of the situation," but will provide no long-term solutions (page 1-13). As a matter of fact, none of the options freezes the size of the fleet at 1990-1991 levels; a lot of vessels that are not presently participating in these fisheries would be eligible to enter during the moratorium, although few, if any, of these eligible vessels are factory ships or large trawlers (page 4-5). Nevertheless, the document plainly states that true effort limitation solutions will come only with a more comprehensive limited access system that may (or may not) follow the moratorium.



One major theme of the document is that achievement of the OY from these fisheries is unlikely under continued open-access management. See section 3.1.3. More and more vessels would likely enter these fisheries, exacerbating the problems identified above. However, the document does not define the term "optimum," but rather explicitly leaves that issue for the Council to resolve at its June meeting.¹ I think the Council will need to articulate the reasons why the specific alternative adopted achieves the OY in terms of biological, social and economic factors. In this regard, the Council will need to explain its "line-drawing" as it develops the qualifying period and eligibility criteria; for example, the Council must strike a balance between present participation in and historical dependence on the fishery when it determines which classes of vessels are eligible under the moratorium, and rather explicitly explain that balance.

Big blanks remaining to be filled in include the qualifying period, the duration, crossovers between fisheries, vessel replacement or reconstruction and limits on upgrading harvesting capacity, exemptions for small vessels or "disadvantaged communities," interaction with the IFQ programs, the data to be considered when determining eligibility, and the procedures used to determine eligibility and conduct appeals. On this final point, I once again attach portions of Pat Travers' legal memorandum on the advisability of keeping eligibility criteria simple; the more complicated and subjective the eligibility criteria, the more we will be absorbed in costly, time-consuming quasi-trials to determine eligibility and adjudicate appeals. NOAA GC certainly doesn't have money to hold a large number of adjudicative hearings.

Specific comments follow:

- Page 1-1. The "1982 North Pacific Halibut Act" is really the "Northern Pacific Halibut Act of 1982."
- Page 1-3. The second sentence of section 1.2.1.2 states that the Council's jurisdiction over king and Tanner crab fisheries in the Bering Sea and Aleutian Islands extends to "state and territorial waters." This is wrong; the Council's direct jurisdiction is limited to the EEZ.

¹ Any limited access system under the Magnuson Act must be designed to achieve the optimum yield. Therefore, it stands to reason that the Council and Secretary must describe "optimum" with some particularity. The concept is really quite open-ended, offering the Council and the Secretary a great deal of discretion. NOAA's Guidelines for Fishery Management Plans at 50 C.F.R. Part 602 should provide some help.

- Page 1-13. Eligibility under the moratorium would be determined by checking "landings data" for that vessel back through the qualifying period. The draft suggests that documents like fish tickets, weekly production reports, annual processor reports to ADF&G, observer reports, or crab tank inspection records. Any implementing regulations must state specifically what data bases will be used, and how NMFS will resolve discrepancies among the various data bases.
- Pages 1-14 and 2-1. The document lists factors that must be considered when determining whether an EIS should be prepared for a proposed action. This list is incomplete, and should be rewritten in the next draft. The drafter should consult NAO 216-6, §6.10c, page 23.
- Page 2-2 and elsewhere. The EA cites to other documents (such as the 1992 SAFE reports) but does not explicitly incorporate them by reference in this EA. If the drafter wanted to incorporate by reference, the EA should explicitly say so.
- Pages 2-12 and 2-13. This part of the document discusses the effects of the moratorium on the physical environment, including the target species. The document states that "[a]ll of the moratorium options would allow for a greater number of vessels to reenter the fisheries than is currently necessary to achieve the OY from the resource," and that there is not much difference between the moratorium options "on the overall capacity of the fleet . . . to achieve OY, at least from the biological perspective" (my italics). I think the drafter really intended to analyze the effects of the moratorium options on the capacity of the fleet to harvest the annual biological quotas; however, by using the term "OY," I think that the drafter also makes an unintended statement that all the alternatives are pretty much the same with respect to social and economic considerations.
- Pages 2-15 to 2-17. These pages deal with potential effects on endangered and threatened species, marine mammals and seabirds. I think PRMD should have a close look at this section.
- Page 3-4, footnote 2. This footnote refers to "NMFS groundfish fish tickets." Of course, there is not, and never was, a "NMFS fish ticket."
- Page 3-7. The document refers to a study by Wiese and Burden which estimates aggregate vessel capacity by using the fleet size "that would just break-even under standard financial criteria." What does this mean?

- Page 3-10. The document asserts that the king and Tanner crab fisheries in the Bering Sea and Aleutian Islands are jointly managed by the ADF&G under an "agreement" with the Council. Actually, these fisheries are managed under an FMP that defers considerable regulatory authority to the State of Alaska.
- Pages 3-23 to 3-24. This section deals with the "maximum" duration of the moratorium. Of course, we all should realize that this Council cannot bind future Councils to any predetermined duration; as is pointed out on page 3-24, future FMP amendments could extend the moratorium indefinitely regardless of any "sunset date."
- Pages 3-19 to 3-23. The document points out the pros and cons of the different qualifying periods proposed by the Council. One issue directly confronted is the difficulty of establishing the existence of a contract for construction, reconstruction or purchase at any particular date under option d. This is no small question, since due process would likely require costly quasi-trials into the existence of such a contracts. The other main issue concerns the proper balance between participating vessels really worthy of future fishing opportunities and those "brazen speculators" who are trying to cash in under the moratorium and a future limited access system.
- Page 3-29. On defining vessel capacity, I vote for something simple, like length overall. After all, this moratorium is not intended as the final solution to overcapitalization problems, so let's keep things as simple and objective as possible.
- Pages 3-38 to 3-39. This section deals with appeals of NMFS' initial determination that a vessel is ineligible under the moratorium. The problem here is that it is impossible to develop appropriate procedures for NMFS' initial eligibility determinations or appeals until the Council has decided on its eligibility criteria; due process requirements of the U.S. Constitution vary greatly depending upon the factors identified in Pat Travers attached memorandum. The Council should keep it simple to reduce the number of quasi-trials for initially determining vessel eligibility and adjudicating appeals. As the draft states on page 3-38, "the time and money costs of [determining and] appealing moratorium eligibility decisions would be minimized to the extent that eligibility criteria developed by the Council are clear and not susceptible to different interpretations." We should all give this thought. For example, the existence at a particular date of a legally binding "contract" for the purchase or construction of a vessel might not be such a simple matter to determine;

disappointed shipyards and their clients sometimes file major lawsuits when a deal goes sour to answer this very question. Of course, this particular problem area could be resolved simply by selecting eligibility criteria that do not hinge upon the existence of a contract (page 3-39).

A final thought -- this moratorium should be kept as simple to administer as possible. It is, after all, an interim step towards a comprehensive solution to your problems.

cc: Lisa Lindeman
Steve Pennoyer
Don Collinsworth
Ron Berg



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March 28, 1983

TO: F/AKR - Robert W. McVey
NPFMC Members and Staff

FROM: GCAK - Patrick J. Travers *Pat Travers*

SUBJECT: Legal Analysis of the Halibut Limited Entry System
Proposed in Northwest Resources Analysis' Draft
Report, "Limited Entry in the Pacific Halibut
Fishery: The Individual Quota Option"

INTRODUCTION

The purpose of this memorandum is to provide an initial legal analysis of the system of limited entry recommended for the Pacific halibut fishery off Alaska in a Report to the North Pacific Fishery Management Council (Council) by Northwest Resources Analysis of Seattle, Washington, entitled "Limited Entry in the Pacific Halibut Fishery: The Individual Quota Option" (Report). The Report was prepared by Dr. Robert L. Stokes of the University of Washington under a contract with the Council. It discusses the feasibility of a limited entry system for the fishery under which "shares" or "quotas" representing rights to harvest specified portions of the annual permissible halibut catch would be assigned to individual fishermen, who could either exercise those rights or transfer them to other fishermen. This type of proposed system has come to be commonly called the "share system," and it will be so referred to in this memorandum. The Report includes a number of recommendations for specific features of any share system that the Council might adopt for the Alaska halibut fishery, and attempts to assess the economic costs and benefits of a share system having these features.

~~The following analysis first examines the authority of the Council to adopt, and NOAA to approve, a share system as recommended by the Report under the Northern Pacific Halibut Act of 1982, Pub. L. 97-176, 97 Stat. 78, 16 U.S.C. 773 et seq. (May 17, 1982) (Act), and evaluates the consistency of that system with the standards that the Act prescribes. It then discusses means by which a share system could be implemented in accordance with constitutional and statutory procedural requirements while avoiding reliance on a large number of trial-type hearings. The analysis then describes the issues that must be resolved in order to determine the extent to which implementation of the share system could be delegated to the State of Alaska or another entity~~



~~the language of the proviso is permissive ("may"), rather than mandatory ("shall"). Because the language of the Act is plain in this respect, legislative history to the contrary is without legal effect. Perhaps the main consequence of the proviso is to exempt any provisions that may be made under its terms from the standards that otherwise apply to limited access systems under the other provisions of §5(c).~~

~~The share system as proposed in the Report contains provisions that would offer the rural coastal villages of Alaska the opportunity described in the proviso.~~

IMPLEMENTATION OF THE SHARE SYSTEM WITHOUT A LARGE NUMBER OF TRIAL-TYPE HEARINGS

Background

Perhaps the greatest potential obstacle to the actual implementation by the Council and NOAA of a share system or other limited access system for halibut would be the need for a large number of trial-type administrative hearings of the kind that the State of Alaska has had to conduct in the implementation of its own limited entry system. Because of budgetary and personnel restrictions, it would be impossible for NOAA to establish a hearing mechanism on anything like the scale of that established by the Alaska Commercial Fisheries Entry Commission. It is important, therefore, to explore means by which a share system could be implemented in a manner consistent with the procedural requirements of law while, at the same time, avoiding reliance on a large number of trial-type hearings.

The law concerning the circumstances under which an agency must offer an opportunity for a trial-type hearing before taking administrative action, which has developed under the Fifth Amendment to the United States Constitution and the APA, is not only complex but, to some extent, internally inconsistent. Any attempt to summarize it comprehensively in the abstract would be of little value. Some principles that are particularly relevant to the limited access context can, however, be suggested to guide the Council and NOAA in their effort to avoid reliance on trial-type hearings. Collectively, these principles suggest that the Council and NOAA should make regulations implementing a share system as specific as possible, relying to the maximum on "legislative" facts concerning the fishery as a whole, rather than "adjudicative" facts concerning specific individuals. The regulations should provide for determination of halibut fishing rights through mathematical calculations based on written evidence, and

should specifically provide for summary disposition of cases in which there is no significant question of fact.

Each of these principles will now be discussed more specifically.

Principles for minimizing the need for trial-type hearings

- (1) Fishing rights under a share system should be assigned as specifically as possible in regulations that are based on general "legislative" facts

It is well established that, through rulemaking based upon "legislative" facts concerning the general political, social, and economic situation, an agency may extinguish or modify rights of persons without a trial-type hearing. This is true even when the Due Process clause of the Fifth Amendment, the APA, or some other law would have required such a hearing if the agency had acted on a more individualized basis. See 2 K. Davis, Administrative Law Treatise, 2d Ed. §14:5 (1979).

For example, it has been held that the Federal Communications Commission could deny an application for a television license without a hearing, despite the express statutory requirement for a "full hearing" before such a denial, where the FCC had previously adopted a rule limiting the number of licenses a person could hold, and the applicant already had that number. United States v. Storer Broadcasting Co., 351 U.S. 192 (1956). Similarly, although a statute required "opportunity to be heard" before an airline pilot's certificate could be modified on an individual basis, it was held that the agency could, through the usual notice and comment procedure, adopt a rule terminating all such certificates whenever the holders reached their sixtieth birthdays without giving those holders any additional hearing. Air Line Pilots Association v. Quesada, 276 F.2d 892 (2d Cir. 1960).

This principle, as illustrated by these and other cases, provides the Council and NOAA with a potent means for avoiding the plethora of individual trial-type hearings that has so plagued the Alaska limited entry program. In order to take advantage of it, they should implement any share system through regulations that specify the assignment of halibut fishing rights in as much detail as possible, foreclosing to the extent practicable issues that might otherwise be left to adjudication through individual hearings. These regulations should be based, as regulations usually are, on "legislative" facts, which are facts concerning the general political, economic, or social situation that the agency is trying to affect. Legislative facts stand in contrast

with "adjudicative" facts, which are facts about individual persons subject to agency action.

- (2) Regulations implementing a share system should express the assignment of halibut fishing rights through formulas that are so exact that the rights of any individual can readily be determined through mathematical calculation using information derived from written records.

Even in a case that might ordinarily involve a question of adjudicative fact requiring a trial-type hearing under the Due Process clause, the APA, or other statutes, such a hearing may not be required "where the decision is based upon mechanical application of mathematics." B. Schwartz, Administrative Law 195-96 (1976). In Pullman Co. v. Knott, 235 U.S. 23 (1914), for example, it was held that a sleeping car company could be required to pay a state tax on gross receipts within the State without a prior trial-type hearing on the amount of tax due. The company was required by the tax law to submit a report listing its gross receipts from business done between points within the State, and the tax was a straight percentage of the amount so reported. Justice Holmes, speaking for the U.S. Supreme Court, stated, "If the companies do as required there is nothing to be heard about. They fix the amount and the statute establishes the proportion to be paid over." 235 U.S. at 26, quoted in Schwartz, supra.

A prior trial-type hearing is normally required before welfare benefits may be reduced or terminated. It has been held, however, that no such hearing was needed where a statute required such a reduction in a person's State benefits in the amount that Federal benefits to that person had been increased under a recent amendment to the Social Security Act. The court held that a trial-type hearing would be meaningless where the only question was whether a mathematical formula had been applied correctly to a specified amount. Velazco v. Minter, 481 F.2d 573 (1st Cir. 1973), discussed in Schwartz, supra.

In light of the principle illustrated by these cases, it would be highly advantageous for the Council and NOAA to implement any share system through regulations that describe the assignment of halibut fishing rights to individual fishermen through mathematical formulas, to the extent that this is practicable. These formulas should be so specific that the halibut fishing rights of any person under the share system can readily and precisely be determined simply by applying the formulas to the relevant facts about that person's relationship to the Alaska halibut fishery. The sources of these facts should, as far as possible, be limited to written records, such as fish tickets. The courts in the

two cases just discussed seem to have been influenced at least partly by the fact that the information to which the mathematical formulas would be applied was readily available in reliable written records. Other cases, the facts of which seem to reinforce this view are Mathews v. Eldridge, 424 U.S. 319 (1976), the leading case on rights to trial-type hearings before administrative action is taken; and Califano v. Yamasaki, 442 U.S. 682 (1979). These cases are discussed in 2 K. Davis, Administrative Law Treatise, 2d. Ed. §13:9 (1979); and id., 1982 Supp. §13:9-1. Thus, the regulations implementing the share system should not only define halibut fishing rights in terms of mathematical formulas, but should also, to the extent reasonable, limit the facts about individual fishermen to which these formulas would be applied to information derived from such written records as fish tickets. (Electronically retrievable records, such as computer data, would do just as well.) By so casting the regulations, the Council and NOAA should greatly reduce the need to rely on trial-type hearings in the share system's implementation.

- (3) Regulations implementing a share system should specifically provide for summary disposition of cases concerning the assignment of halibut fishing rights when such cases do not present significant questions of fact.

Even in situations where trial-type hearings would not have been required under principles like those just discussed, agency decisionmakers have sometimes held such hearings needlessly because they lacked specific guidance on the criteria and procedures for refusing a hearing. See 3 Davis, Administrative Law Treatise, 2d Ed. §14:7 (1980). It is therefore important that regulations implementing a share system include provisions that regulations implementing a share system include provisions for summary disposition without trial-type hearings of cases that do not raise significant questions of adjudicative fact. These provisions would be based on the same principles long used by courts in issuing summary judgments, and would help ensure that full advantage was taken of provisions designed to minimize reliance on trial-type hearings. The Administrative Conference of the United States and the regulations of other agencies provide examples of summary disposition procedures upon which the Council and NOAA can draw. Id.

~~DELEGATION OF THE SHARE SYSTEM'S IMPLEMENTATION TO THE STATE OF ALASKA OR ANOTHER ENTITY OUTSIDE OF NOAA~~

~~The budgetary and personnel limitations to which NOAA is currently subject have caused concern that these limitations might prevent the agency from effectively implementing even a share system that did not rely heavily on trial-type hearings.~~

North Pacific Fishery Management Council
MORATORIUM COMMITTEE

June 11, 1992
NMFS Northwest and Alaska Fisheries Center
Seattle, WA

MINUTES

The Moratorium Committee convened at 9 am, with John Crowley, Doug Dixon, David Green, and Kevin Kaldestad in attendance. Vern Hall, LCDR Glen Sicks, and Stan Simonson were unable to be at this meeting, but each had provided input to Council staff prior to the meeting. Jim Cornelius from the Council staff and David Hamm from NMFS regional office in Juneau represented the analytical team. Several members of the general public also attended.

The purpose of this meeting was to evaluate the options and elements proposed by the Council in the draft Moratorium EA/RIR. The committee focused its attention on those issues likely to influence the practicality and usefulness of the moratorium in achieving the Council's stated objectives.

The group spent the first hour reviewing the individual public comments that had been received relating to the moratorium, and assessed the changes to the original Council draft of the analysis as a result of the April meeting. The committee then went through each of the twelve individual elements under consideration in the moratorium proposal, and commented on those elements and options that would likely affect implementation and success of the plan.

1. Qualifying Period. The committee concluded that the verification and equity problems created by basing eligibility on option d (the original control date language) will be very difficult to overcome. As addressed in the comments by NMFS Attorney Jon Pollard, the verification process would need to examine the contractual records on a case by case basis, possibly requiring lengthy and potentially expensive quasi-trials. Table 3.1 in the moratorium EA/RIR indicates that between 831 and 1,146 vessels entered the fishery after September 15, 1990 control date, but before the extension through January or February 1992. Both the legal and process questions surrounding the verification of this many vessels impose a formidable obstacle in implementing a timely, simple vessel moratorium. From the perspective of implementation, the committee recommended that the Council select an unambiguous cut-off date.

The committee did not adopt a unanimous recommendation concerning the specific starting and ending date of the moratorium, only that option d posed serious problems for implementation of the plan. Individual committee members discussed the merits of options that insure consideration of both the earliest (option a) and latest (option f) participation in the fishery. Although legal challenges to the moratorium are likely to be minimized with the most liberal qualifying period (options a and e), this option may undermine the effectiveness of the moratorium.

2. Length of Moratorium. Since the Council might subsequently extend the duration of the moratorium regardless of the length chosen, the option designated under this element appears provisional. It may be useful to clarify the timing or process under which an individual fishery is removed from the moratorium, if open access in that fishery is replaced with a permanent limited access program.

3. Crossovers During Moratorium. The committee had no further comment on this element.

4. Replacement or Reconstruction of Vessels During the Moratorium. Consistent with their earlier suggestions to the Council, the committee recommends that vessel length serve as the unambiguous standard for prescribing allowable changes in a vessel. No further restrictions would be imposed on width, height, hold, horsepower, fishing and processing gear, or other physical parameter. However, the committee advises that the existing length of the vessel could not be exceeded as a result of replacement or reconstruction under the moratorium. That is, there would be no allowable tolerance increase in vessel length.

The committee discussed possible exemptions from the vessel length restrictions recommended as a part of allowable changes under this moratorium element. Preventing the lengthening of vessels under the replacement or reconstruction criteria may lead to inequitable impacts for some segments of the fleet, such as a wooden boat owners, at-sea delivery vessels, and vessels with inherent design problems. However, rather than adopt a blanket allowable increase in vessel length, the committee concluded that such cases might be more appropriately dealt with in the appeals procedure. Alternatively, designated vessel categories might be granted replacement/reconstruction rights that include percentage allowance increases in length.

The committee also considered the possibility that a secondary market for "replacement rights" might arise as a result of vessel replacement privileges. Such transactions are likely to be a natural outgrowth of the proposed action. The Council could monitor the exchange process to insure that the results are consistent with moratorium objectives.

5. Replacement of Vessels Lost or Destroyed During the Moratorium. Recommend adoption of the same criteria for defining capacity and allowable changes as discussed in #4, above.

6. Replacement of Vessels Lost or Destroyed Before the Moratorium. No specific recommendation on option a or b concerning implementation. Recommend adoption of the same criteria for defining capacity and allowable changes as discussed in #4, above. A vessel could only be replaced once under this provision, and within two years of implementation of the moratorium. The definition of a lost or destroyed vessel should be standardized, possibly adopting the terminology used by the Coast Guard. The relationship between insurance agreements and replacement rights could complicate this element. The committee perceives that it is the vessel's federal fishing permit holder who maintains replacement rights, even if ownership passes to the insurance company in the event a vessel is destroyed.

7. Small Vessel Exemption. Exempting small vessels may simplify implementation and administration of the moratorium, but an exemption appears contrary to the Council's moratorium objectives.

8. Disadvantaged Communities. Based on the fleet size and apparent vessel availability reported in the EA/RIR, there is little rationale for creating a blanket exemption for disadvantaged communities, particularly option c. An appeals process would be available for considering individual cases.

9. Minimum Qualifying Poundage. No further consideration or recommendations were made by the committee.

10. Applicable Sectors of the Industry. No further consideration or recommendations were made by the committee.

11. Appeals. For purposes of consistency and expedience, a single hearings officer can operate more efficiently than a hearings board. However, the appeals procedure likely will require industry familiarity and industry expertise beyond that available from a single hearings officer. The committee suggests that a hearings board be established to review those appeals referred by the hearings officer that require more than a routine application of the regulations. The board need not be directly involved in all appeals.

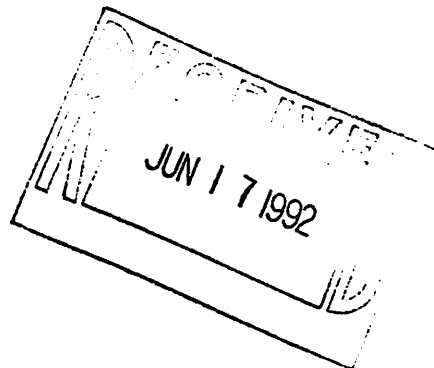
12. Halibut and Sablefish Fixed Gear Vessels. The committee recommends that halibut and sablefish fixed gear vessels be included in the moratorium until those fisheries are effectively brought under the IFQ program developed by the Council. After implementation of the IFQ program, these fisheries would become exempt from the vessel moratorium. New vessels brought in under the IFQ regime would not be allowed to participate in directed fisheries other than halibut and sablefish, and incidental catch of other species would be treated as bycatch. While there is some potential for the replaced but moratorium-qualified vessels to add to harvest capacity in other fisheries, the options are limited, and the impact on overcapitalization in the remaining open access fisheries is expected to be relatively minor.

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June 16, 1992



Via DHL Courier

North Pacific Fishery Management Council
P. O. Box 103136
Anchorage, AK 99510

Re: Kevin Suydam - New construction of LADY ALASKA, Off.
No. 972591 - Written submission for Sitka Public
Hearing June 23, 1992 on exemption from moratorium

Gentlemen:

Following the certified mail, return receipt requested mailing of my letter dated June 15, 1992 to the Council, I now enclose 18 additional copies of that letter. These copies are being furnished to you pursuant to instructions contained in the Council's June 5, 1992 Draft Agenda for the 102nd Plenary Session.

Very truly yours,

Dwight L. Guy

DLG:wj
Encls.

cc: Mr. and Mrs. Kevin A. Suydam

LAW OFFICES OF
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June 15, 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

North Pacific Fishery Management Council
P. O. Box 103136
Anchorage, AK 99510

Re: Kevin Suydam - New construction of LADY ALASKA, Off.
No. 972591 - Written submission for Sitka Public
Hearing June 23, 1992 on exemption from moratorium

Gentlemen:

The purpose of the letter is to bring to your attention the history of the construction of the captioned vessel and the circumstances beyond the control of my clients Kevin A. and Wenona A. Suydam which made it impossible for the vessel to actually participate in the Alaskan fisheries prior the date which has heretofore been indicated as the moratorium, January 15, 1992.

On January 10, 1990, my clients contracted with Tri-Star Marine, Inc. for the construction of two vessels. One of the vessels has been completed and is fishing. The second vessel is the captioned vessel. (Note: The captioned vessel was issued its U.S. Coast Guard Official Number 972591 on January 25, 1991 and ADFG vessel license on May 9, 1991, copies of which are available on request.)

Due to circumstances totally beyond the control or influence of my clients, the captioned vessel did not harvest any fish prior to the deadline suggested to be the moratorium date for vessels not earlier qualified - January 15, 1992. The reasons for the failure of the captioned vessel to qualify are several:

1. Bank financing - My clients initiated construction of the captioned vessel by using their own resources, spending many hundreds of thousands of dollars in the prefabrication of steel for the vessel's hull and in the acquisition of shafts, propellers, rudder gear, pumps, compressors, ports, doors, hatches, plumbing, piping,

electronic components, and crab and fuel tanks. Further, they made substantial deposits toward the ordering and purchasing of engines, cranes, refrigeration equipment, anchor winch and crab block hydraulic gear. Also, to complete the construction, my clients secured a commitment for bank financing from the bank with which my clients have historically dealt. Construction of the captioned vessel was halted in May of 1991 at a time when additional funds under the bank financing were needed, but were unavailable. If the construction had not been interrupted, construction would have been completed and fish would have been landed three months ahead of January 15, 1992. Although their bank has been most cooperative and rather optimistic regarding the granting of additional financing to complete construction, my clients have not been able to utilize the commitment for such financing. The bank refused to advance additional loan funds due to unanswered questions in the industry regarding the moratorium and how it may be applied to new construction. The bank also had reservations regarding the disposition of IFQ's for new construction. The bank was very circumspect in its lending attitude where the Alaska commercial fisheries and the moratorium are involved.

Because my clients had one half million dollars of their personal funds already invested, they felt they could not abandon the construction. As a consequence, it became necessary for my clients to pledge other collateral to raise funds in order to complete the captioned vessel. Their mortgage-free personal home was mortgaged. Another vessel owned by my clients had to be encumbered with a preferred ship mortgage. Further, earnings from another vessel were diverted to the construction project. Construction recommenced in January 1992, as the January 15, 1992 deadline passed with the moratorium still only in proposal form, and my clients could no longer remain in limbo.

2. Indecision of the Council - All those involved with the Alaska commercial fisheries have waited and wondered about the issuance by the North Pacific Fishery Management Council of its recommendation to the Secretary of Commerce regarding the moratorium. Included in the group that has been waiting and watching are the vessel owners and the banks. Critical decisions by vessel owners and lending decisions by banks have been delayed accordingly. While my clients acknowledge that the Council seems to have done as much as it can do in the way of advising the public of the

progress of its deliberations over the moratorium and quota issues, my clients have been forced to take extraordinary risks with the funding of the ongoing construction of the captioned vessel.

3. Shipyard scheduling - Contributing somewhat to the delay in the progress of construction of my clients' vessel were some unforeseen changes in scheduling by the shipyard Tri -Star Marine, Inc.

REQUEST FOR RELIEF

My clients are Alaska residents and are long term fishing vessel owners and operators. Their investment in the captioned vessel is now measured in the millions of dollars. They are not speculative late participants in the industry trying to sneak in under the moratorium deadline. They had contracted to build the two vessels at Tri-Star Marine, Inc. long before the first publication of notice with regard to a moratorium. Their inability to meet the January 15, 1992 date, or even the date which may be adopted during the week of June 21, 1992, is due to circumstances beyond their personal control. The construction of the captioned vessel will be complete in July 1992. Exclusion of the captioned vessel from participation in the Alaska fisheries, both crab and halibut, will work an extreme financial hardship on my clients which could lead to the loss of their investment and their inability to repay indebtedness incurred in the construction and outfitting of the vessel.

My clients contend that the Council is directly responsible for the interruption and halt of construction in May of 1991. It is the lack of definitions, qualifications, and loose phrases such as "due consideration will be given" that have confused and confounded the industry and the industry lenders. Moreover, the confusion has been compounded by the injection of the issues related to IFQ's.

In order to further protect their interests in this uncertain environment, my clients have taken by formal assignment the fishing entitlements of the equivalent sized vessel OPTV Off. No. 532406, which sank in December of 1988. That assignment was taken from the owner who did not have the financial resources to replace his vessel. A copy of that assignment is available upon request. Because there are no guidelines currently in place for vessel replacement or vessel substitution, together with fishing entitlements related thereto, my clients should also qualify for

NPFMC
June 15, 1992
Page 4

participation in Alaskan fishing with the captioned vessel on the strength of the entitlements assigned to them from the OPTV.

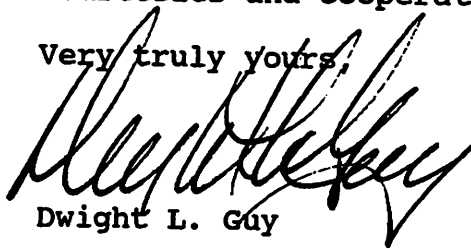
Accordingly, my clients hereby apply to the Council and to the Adjudication Committee for an exemption from the effects of any moratorium for entry of new vessels into the Alaska fisheries as it might otherwise apply to the captioned vessel. My clients stand ready to provide you with what further information or documentation you may require.

Future correspondence on the subject matters raised in this letter may be addressed either to these offices or to my clients

Mr. and Mrs. Kevin Suydam
P. O. Box 980
Kodiak, AK 99615

Thank you for your anticipated courtesies and cooperation.

Very truly yours,



Dwight L. Guy

DLG:wj

cc: Mr. and Mrs. Kevin A. Suydam

Testimony before the North Pacific Fisheries Management Council.

Sitka, Alaska

June 23, 1992

Re: Kevin Suydam. New Construction of LADY ALASKA, Off. No. 972591. Testimony Relating to Exemption from Vessel Moratorium

My name is Bruce Weyhrauch. My address is 302 Gold Street Juneau, Alaska. I am an attorney with Faulkner Banfield Doogan and Holmes. I come before the Council today on behalf of Kevin and Wenona Suydam. Mr. Suydam is unable to appear before you today because he is diligently working on completing construction of the LADYALASKA, a fishing vessel Mr. Suydam intends to use in the Alaska groundfish, crab, and halibut fisheries.

In the event the Council implements a vessel moratorium that limits the number of vessels participating in the Alaska groundfish, crab, and halibut fisheries, Mr. Suydam requests that the Council grant him an exemption from the moratorium for the LADYALASKA

that is now almost constructed.

Mr. Suydam has demonstrated good cause for asking for such an exemption. He has submitted evidence and written comments to the Council and to NMFS in support of his request for an exemption. His requests for an exemption have been timely. We ask at this time that those written comments submitted prior to today's testimony also be made part of the record.

On September 5, 1990, NMFS gave notice of its intent to limit access to groundfish, crab, and halibut fisheries off Alaska by limiting vessels entering these fisheries after Sept. 17, 1990. The federal register notice stated that vessels entering these fisheries after that date would not be assured access to the fisheries if a moratorium was implemented.

NMFS, however, indicated that due consideration would be given to those vessels under construction or under contract for construction or purchase as of Sept. 17, 1990 for the purpose of participating in the halibut, groundfish, or crab fisheries off Alaska, provided those

vessels harvested fish by Jan. 15, 1992.

Consideration was also to be given to vessels under written option or written contract for construction prior to Sept 17, 1990, if the vessels were under written contract for construction as of Jan. 1, 1991 for the purposes of participating in the fisheries and harvested fish as of Jan 15, 1992.

The purpose of this announcement was twofold: to alert the public of the Council's intentions and discourage new, speculative entry into the fisheries while the Council discussed how to control access. The notice by NMFS provided:

some fishermen who do not currently fish in these fisheries, and never have done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings from these fisheries. Such a record generally is considered indicative of economic dependence on the fishery. On this basis the fishermen may claim access to a fishery that otherwise would be

limited to traditional participants. New entrants may have to buy fishing rights from an existing participant. Such future entry costs may inspire speculative entry

Page 36303.

The Council's intent in establishing a vessel moratorium was to "distinguish bona fide, established fishermen from the speculative entrants to a fishery" Id. Finally, the notice informed the public that the Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The council also indicated that it may choose a limited access regime that does not make use of such dates. Id.

The Council also indicated that vessels in the relevant fisheries could be replaced with boats of similar capacity. The replaced or lost vessel could not be then salvaged and come back into the fishery.

Now Mr. Suydam is not a newcomer to Alaska or fishing in North Pacific waters. Mr. Suydam moved to Kodiak when he was four years

old and has been a commercial fisherman since he was 17. Mr. Suydam, his wife, and their five kids are a fishing family. Mr. Suydam has a history of past participation in North Pacific fisheries and has consistently participated in those fisheries. Mr. Suydam is not seeking this exemption as a newcomer to the fisheries. He is neither a speculator, nor is he trying to sneak into the fisheries under the Council's moratorium deadline. Mr. Suydam is a bona fide, established fisherman who entered into a written contract to build the LADYALASKA before Sept. 1990.

If the Council implements a cut off date by which time a vessel should have landed fish in order to beat the vessel moratorium, the Council should also recognized bona fide fishermen who have diligently contracted to have vessels completed by that cut off date, but which, through unforeseen and unavoidable circumstances, had not landed fish.

On January 10, 1990, Kevin Suydam contracted with Tri-Star Marine of Seattle to construct two fishing vessels. One of these, the LADYKODIAK, is already fishing. The sister vessel, the LADY

ALASKA is still under construction. But the key point is that Mr. Suydam contracted to have the LADYALASKA built before the public received notice that the Council was considering imposing a vessel moratorium.

Mr. Suydam intends to fish the LADYALASKA when it is completed. As evidence of Mr. Suydam's diligence, and good intentions, the LADYALASKA has been assigned an official number by the U. S. Coast Guard, and ADF&G has issued the LADYALASKA a limited entry permit.

Today Mr. Suydam asks the Council to recognize the special circumstances that he has faced in getting the LADYALASKA's construction completed and the vessel out fishing. Consider the following specific facts.

The LADYALASKA has been under construction since 1990. Construction completion of the LADYALASKA is expected within about one week. But the LADYALASKA faced delays in completion. For example, Tri-Star Marine, the shipyard constructing the LADY

ALASKA made unforeseen changes in scheduling the LADY ALASKA's construction because a tug under construction at the yard delayed construction.

Mr. Suydam had secured bank financing for the LADYALASKA's construction. But this financing was withdrawn in May 1991, and thus became unavailable and construction halted while Mr. Suydam obtained alternative financing. The bank withdrew construction funds because of the uncertainty in the industry arising from the Council's consideration of the vessel moratorium program and additional uncertainty over how the proposed vessel moratorium would be applied to new vessel construction.

This withdrawn bank financing for construction also led to delays. The estimated cost of the LADYALASKA was about \$2.5 million. Mr. Suydam had to contribute significant funds to this cost by personally spending thousands of dollars. He and his wife Wenona took out a mortgage on a mortgage-free home to raise funds to complete construction. Another vessel owned by Mr. Suydam, the LADYPRIBILOF, was encumbered with a preferred ship mortgage to

obtain additional funds to complete the LADYALASKA. Another vessel fished by Mr. Suydam, the former LADYALASKA and the LADY KODIAK, had earnings diverted to help finance the new LADY ALASKA's construction.

A vessel moratorium policy has been under consideration by the Council since at least Sept. 1990. The Council's protracted analysis and consideration of this proposed moratorium and the Council's failure to make a reasonably quick decision has led to a tremendous amount of uncertainty in the fishing and financial industries. This factor has further slowed the financing process associated with the LADYALASKA's construction.

Mr. Suydam asks that the LADYALASKA not be excluded from participation in Alaska crab, halibut, and groundfish fisheries under the vessel moratorium. Excluding the LADYALASKA from these fisheries will work a significant personal and economic hardship on Mr. Suydam and his family. An exclusion could lead to insolvency, a loss of investment, and inability to repay indebtedness incurred in construction and outfitting of the vessel.

If the Council adopts regulations or a policy dealing with the vessel moratorium, there should be language that addresses the rare but difficult situation faced by fishermen like Mr. Suydam. Vessels that missed a Jan. 15, 1992 catch date, but that can demonstrate that they had obtained a Coast Guard documentation number, an ADF&G number, and that experienced delays in construction completion because of withdrawn financing should be allowed in North Pacific fisheries under a vessel moratorium program adopted by the Council.

If a Hardship Committee formed by the Council, or the Council as a whole, reviews these matters, Mr. Suydam applies for an exemption from the effects of a moratorium for entry of new vessels into the Alaska fisheries for the LADYALASKA.

In the alternative, Mr. Suydam has sought to protect the LADY ALASKA's position as a new entrant into Alaska's crab, halibut, and groundfish fisheries. Mr. Suydam has a formal assignment in the fishing entitlements for these fisheries from the fishing vessel OPTY. The OPTY is equivalent in size to the LADYALASKA. The OPTY sank in December 1988. The OPTY cannot be salvaged and come

back into Alaska's fisheries. The owner of the sunken OPTY did not have the financial resources to replace his vessel. Therefore, Mr. Suydam qualifies for participation in the Alaska fisheries with the LADYALASKA on the strength of the entitlements assigned to Mr. Suydam for the OPTY.

I appreciate the Council's time and consideration.



Union Bay Shipbuilding Corporation

June 22, 1992

North Pacific Fishery Management Council
P.O. Box 103136
Anchorage AK 99510

Gentlemen:

I would like to re-emphasize and expand my letter to Clarence Pautske of May 26, 1992, discussing the proposed moratorium on vessel reconstruction.

I understand your desire to restrict vessels from adding additional capacity. However, I am concerned you may decide to limit increases in beam as well. I believe this would be a mistake, since it would unfairly impact two classes of vessels.

The first class is composed of typical crabbers which converted to joint-venture or mother-ship trawling, and may now have to deliver their catch to shore-based processors. The addition of trawl gear has made these vessels too heavy to allow safe filling of their holds (which was unnecessary for joint-venture or mother-ship operations). With the onshore/offshore allocation forcing more processors to operate onshore, some of these vessels will be left without markets unless they are reconstructed. Increasing their beam would not increase their installed capacity at all, but would allow them to utilize it safely. The second class consists of a number of crabbers, built without sufficient beam for safety. Increasing their beam would greatly enhance their stability, and would increase their deck area. Since new regulations already limit the number of pots that can be fished, a physical limitation to the boat is redundant.

While allowing increases of beam may increase some vessels' capacity to fish, it is self-limiting and will not lead to a wholesale increase in the capacity of the fleet. Hydrodynamics are improved by lengthening; they are degraded by widening. A boat with beam more than about 40% of her length would be an impractical misfit. A typical sponsoning costs twice as much as a typical lengthening, with similar effects on capacity. An owner will have half the incentive to sponson a vessel as to lengthen it, and is likely to do so only in those cases of real hardship I have mentioned.

Thank you for your consideration of these points.

Sincerely,

A handwritten signature in black ink, appearing to read "T. R. Dyer", written over a horizontal line.

Thomas R. Dyer
President

MARCO SHIPYARD
SEATTLE

2300 West Commodore Way • Seattle, WA 98199 USA
Phone (206) 285-3200 • Telex 160587 MARCO UT
FAX: (206) 285-8486

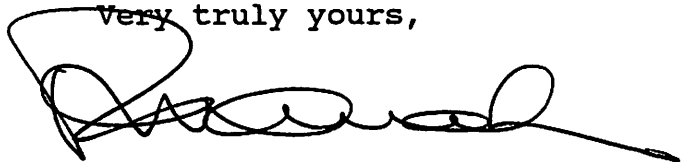
18 June 1992

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

Dear Chairman Lauber:

Attached is a copy of the revised comments of MARCO Shipyard relating to the proposed moratorium. Comments submitted to you on June 8 did not reflect recent regulatory changes, and we have modified our submission accordingly.

Very truly yours,



Robert T. McMahon
Vice President

RTMLLAU4

MARCO SHIPYARD
SEATTLE

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FAX: (206) 285-8486

18 June 1992

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

Dear Chairman Lauber:

The following are the comments of MARCO Shipyard relating to the proposed moratorium on the entry of new vessel into the groundfish, crab, and halibut fisheries in the Gulf of Alaska and the Bering Sea.

As a shipyard that conducts a significant portion of its work on the construction, conversion, and repair of fishing industry vessels, MARCO clearly would rather see alternative methods of managing a fishery other than imposing restrictions on the ability of a fisherman to construct a new vessel or improve upon an existing one. We do, however, respect the widespread view within the industry and the NPFMC that a freeze on the growth in the number of vessels is necessary as an interim step pending the development of some final fishery allocation regime. Moreover, the NPFMC modified the proposed control dates at the request of the fishing industry shipyards and permitted certain legitimate pipeline projects to go forward. MARCO has therefore made a corporate decision to do nothing to oppose the approval and implementation of the moratorium as currently proposed.

The following comments are being offered to assist the Council in its final deliberations at the June meeting in Sitka.

Safety Considerations

The most important issue relating to the moratorium is the potential impact of any proposal on the ability of the fleet to modify existing vessels to improve on seaworthiness and stability. We have already had a number of inquiries from vessel owners interested in lengthening, sponsoning, shelter decking, and repowering existing vessels. We hope that the uncertainties created by the moratorium discussions can be resolved this June so that vessel owners are permitted to go forward with their conversion and replacement work.

Richard B. Lauber, Chairman
North Pacific Fisheries Management Council
18 June 1992
Page 2

Sponsoning, lengthening, shelterdecking, and repowering all have a positive effect on the safety of the vessels concerned. Lengthening, sponsoning, and shelter decking all add reserve buoyancy, which improves stability. Shelter decking puts the deck crew farther above the water, thus keeping them dryer. It also has a relatively greater impact on reserve buoyancy than the other modifications. Repowering makes the vessel better able to handle head seas, provides reserve power for greater reliability, and improves the ability to power out of dangerous situations. We have all heard stories of crab boats which would have been lost due to flooding in the larzarette had the boat not been able to power ahead, lifting the stern dynamically until the space was pumped out.

All of these modifications make the vessels generally better sea boats because they reduce the frequency of accidents to the crew. Improved stability avoids capsizing and minimizes the roll during operations. Shelter decking minimizes accidents to the crew because they stay drier. Reserve power caused by repowering gives the vessel a critical tool in avoiding dangerous, open ocean situations. Restrictions under the moratorium which make it difficult for vessel owners to make these modifications adversely impact the ability of these owners to provide for the health and welfare of their crew.

In addition to conversion and repair work, it is also important that the NPFMC retain in its proposal the ability of a vessel operator to entirely replace an existing vessel. The fishing industry has evolved to the point where it may become impractical for a vessel owner to try and extend the useful life of an obsolete and unsafe vessel in order to continue to remain in the fishery. Many of the current groundfish trawlers are vessels which have already undergone at least one conversion from crabbers to trawlers in response to the collapse of the crab industry in the early 1980s. A viable alternative to further conversion work for some owners may be replacement with a modern, stable vessel. The option to replace obsolete vessels during the moratorium period should be retained.

MARCO has reviewed the recommendations of the Moratorium Committee regarding the standards for determining "similar capacity" in the allowable reconstruction or replacement of existing vessels. Although we believe that lengthening is a positive safety feature in the conversion of many existing vessels, MARCO agrees with the views of the Committee that a restriction on vessel length is the most reasonable "bright line" test for the determination of "similar capacity". The use of Length-Overall or Registered Length as the definition would permit the shipyards to engage in effective safety-related conversion work. Arbitrary, numerical restrictions on hull capacity are not proper because the measurement is overly confusing, easy to avoid, and result in an unreasonable distortion of vessel stability designs. We recommend that the NPFMC adopt the Committee's recommended definition.

Richard B. Lauber, Chairman
North Pacific Fisheries Management Council
18 June 1992
Page 3

Small Vessel Exemption

MARCO recommends that the NPFMC consider the adoption of a blanket exemption for vessels under 60 feet in length from the moratorium. The objective of effectively limiting capacity in the fisheries is simply not accomplished by applying the moratorium to the small vessel fleet.

The trend in the economics of the fisheries in Alaska is toward the procurement of a small vessel by a family-run operation only to the extent that the vessel can target multiple species. Weather and water conditions currently limit the use of small vessels to the salmon, herring, halibut, sablefish, and grey cod fisheries. A vessel operator will need to be able to target a combination of these species in order to operate economically over the long-term. Entry into the salmon and herring fisheries are, with a few exceptions, limited by State of Alaska's license limitation regulations. Entry into the halibut and sablefish fisheries are soon to be limited by the proposed ITQ program. Grey cod is currently the only fishery which does not yet have a program for overall effort limitation.

The moratorium, on the other hand, would continue to grant eligibility to thousands of vessels under 60 feet for all of the federal fisheries encompassed within its scope. The Regulatory Impact Review has estimated that, under the most restrictive alternative for eligibility (M-3), 7204 vessel under 60 feet will still remain eligible for the fisheries during the moratorium period. It does not take much imagination to conceive that a fisherman who otherwise qualifies for the state-regulated fisheries and/or ITQs will also be able to enter the grey cod fishery by shopping to procure one of the more than 7000 vessels which meet the eligibility test. All the moratorium accomplishes for this class of vessels is to increase the sale price of existing vessels. It does not pose an effective bar on entry.

The NPFMC should recognize the reality that a decision to enter the fisheries with a vessel of this size will be dictated by the operator's access to ITQs and/or the state-regulated fisheries. Again, sound public policy dictates a management regime which allows the fisherman to decide whether to purchase an existing vessel which may have an obsolete stability design, or to newly contract for a modern design with all of the state-of-the-art stability features.

Richard B. Lauber, Chairman
North Pacific Fisheries Management Council
18 June 1992
Page 4

Exemption for Community Development Quota Participants

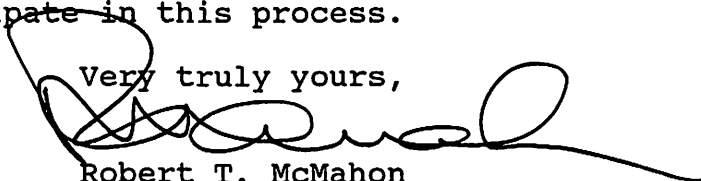
A similar exemption should be granted for those fishermen who will qualify for CDQs of pollock and halibut in the Bering Sea. One of the primary objectives of the CDQ program is to allow residents of qualified villages on or adjacent to the Bering Sea to eventually procure their own vessels and participate in the fisheries. This would be very difficult to accomplish during the period of the moratorium. In order to have any chance at success, these eligible fishermen must be given the opportunity to contract for the construction of new fishing vessels of 75 to 90 feet in length.

The fishing conditions in the Bering Sea are not conducive to the use of vessels less than 60 feet in length as a general rule. Fishermen need a bigger vessel to participate in the pollock and grey cod fisheries in the Bering. Unlike the universe of vessels 60 feet or less which would qualify under the moratorium, there are only a limited number of vessels between 60-90 feet which participated in both the halibut and groundfish fisheries. Table 3.5 on page 3-27 of the Regulatory Impact Review illustrates that only 193 vessels fished for both halibut and groundfish during the most lenient eligibility period (M1). The number of these vessels which would be available for purchase by CDQ fishermen would in fact be much less if the Council adopts the more restrictive eligibility period (M3). Furthermore, only a portion of the remaining vessels would be available for sale at any given time and the owners could command a better price from the CDQ fisherman than they might otherwise be willing to sell for. It is also likely that the vessels available for purchase would need substantial modifications to improve their stability.

Not granting a 90 foot exemption for CDQ fishermen to operate in the Bering Sea would effectively eliminate eventual vessel owner-operator status as an objective of the CDQ program by increasing the cost of entry for the reasons described above. The CDQ fishermen should be permitted to build a new vessel to participate in the Bering Sea Fisheries.

MARCO requests that the NPFMC and the Department of Commerce move expeditiously to dispose of the moratorium issue. The adverse impacts on the industry and the U.S. shipyards caused by the uncertainty created by these deliberations have gone on too long. We appreciate the opportunity to participate in this process.

Very truly yours,



Robert T. McMahon
Vice President

RTMLLAU3