


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director 

DATE: September 28, 1998

SUBJECT: License Limitation Program (LLP)

ESTIMATED TIME  
8 HOURS

**ACTION REQUIRED**

Final action on proposed groundfish and crab LLP amendments.

**BACKGROUND**

(a) Proposed LLP Amendments

In February of this year the Council initiated several potential amendments to the LLP scheduled for year 2000 implementation. The analysis of these proposed amendments was reviewed during the June Council meeting and released for public review after changes suggested by the Council, SSC and AP were incorporated into the document. These proposed amendments are primarily geared towards further capacity reduction in the groundfish and crab fisheries.

At the June meeting NMFS provided the Council a list of changes they anticipated making to the LLP final rule. One change dealt with the issue of requiring that a vessel be listed on the license. The proposed rule indicated that the vessel would be listed on the license, however the final rule, as proposed, would not link the vessel and license. Based on Council concerns over this proposed change, NMFS has developed a discussion paper on this issue which will be made available and presented at the meeting.

Six major final decision points are scheduled under the LLP agenda item. They are the following:

1. Prevent transfer of permits from vessels that never held a federal fishery permit during the LLP qualifying period and prohibit transfers of fishing histories and subsequent licenses which would be issued as a result of those transfers that occurred after February 7, 1998, (applies to all vessels, regardless of size). An option to this amendment would allow licenses to be transferred, so long as the vessel originally assigned to the license is also transferred along with the license.
2. Prohibit licenses and fishing histories earned by vessels employing non-trawl gear to be used on vessels employing trawl gear and licenses and fishing histories earned by vessels employing trawl gear to be used on non-trawl gear vessels (i.e., if a vessel never used trawl gear during the original qualification periods, that license could not be converted for using trawl gear, and vice-versa).

- a. Grandfather rights only to persons who can demonstrate significant financial commitment to apply a non-trawl license or fishing history to a trawl operation (and the reverse) through February 7, 1998, with the following suboptions:
  - (i) has made a landing with trawl gear (or the reverse, non-trawl) through February 7, 1998;
  - (ii) has made a significant investment in conversion of a vessel to deploy trawl (or the reverse, non-trawl) gear through February 7, 1998.
  
- 3. Rescind the CDQ vessel exemption portion of the LLP, with grandfather rights to any vessels currently built or operating in an existing CDP under this provision.
  
- 4. Clarify that catch history transfers would be recognized, except those occurring after June 17, 1995, and where the owner of the vessel at that time was unable to document a vessel under Chapter 121, Title 46, U.S. Code. This change would also modify the plan amendment to clarify that the fishing history of those vessels, whose owner could not document a vessel on June 17, 1995, would be extinguished.
  
- 5. Initiate an amendment (possibly a trailing amendment) to the Crab LLP to include a recent participation clause, the following recent participation options were specifically studied in this analysis:
  - a. Alternatives explicitly studied
    - (i) Status quo
    - (ii) 1996
    - (iii) 1995 and 1996 (requires participation in both calendar years)
    - (iv) 1996 and 1997 (requires participation in both calendar years)
    - (v) 1997 and January 1, 1998 through February 7, 1998 (requires participation in both calendar years)
    - (vi) 1995, 1996, and 1997 (requires participation in all three calendar years)
    - (vii) 1996, 1997, and January 1, 1998 through February 7, 1998 (requires participation in all three calendar years)
    - (viii) 1995, 1996, 1997, and January 1, 1998 through February 7, 1998 (requires participation in all four calendar years)
    - (ix) 1996, 1997, or January 1, 1998 through February 7, 1998 (requires participation in any year)
    - (x) 1995, 1996, 1997, or January 1, 1998 through February 7, 1998 (requires participation in any year)
    - (xi) Any two of the four calendar years 1995, 1996, 1997, or January 1, 1998 through February 7, 1998
  
  - b. Analysis will consider:
    - (i) all vessels
    - (ii) vessels under 60 ft.
    - (iii) vessels 60-125 ft.
    - (iv) vessels over 125 ft.
  
- The recent participation requirement would apply to the general umbrella license only (i.e., if a vessel satisfies the recent participation criteria chosen, it would receive its original umbrella license and all the species/area endorsements originally earned under that umbrella — new species/area endorsements could not be ‘earned’ during the new qualification period).

- Options to allow exemptions for lost or destroyed vessels, vessels < 60' LOA, vessels under construction, and vessels that participated in 1998 have been added to this section of the analysis
  - This amendment is not to impede or delay implementation of the LLP program.
  - The amendment/regulations should be structured such that interim permits could be issued for the Crab LLP if these changes cannot be fully implemented when the LLP program takes effect, and structured such that permanent permits could then be issued without additional amendments to the plan.
  - Council serves notice that the above dates for meeting performance standards are very firm. The Council may examine more recent participation than February 7, 1998, in making its final decision (such as date of final Council action), but cannot now foresee any extraordinary circumstances that would allow the cut-off dates to be advanced past those shown above.
6. Proposed amendment would allow limited processing for catcher vessels in the BSAI and GOA under the following options:
- Option A: Maintain the status quo.
- Option B: Allow processing of bycatch amounts of any groundfish, up to directed fishing standards, by vessels with a catcher vessel designation.
- Option C: Allow processing of any species, excluding pollock as a target species, of (a) up to 5 mt round weight per day for vessels <60'; and (b) up to 18 mt round weight per day for vessels >60'.

This analysis, completed primarily under contract to Northern Economics, Inc., was mailed to you on August 21. Marcus Hartley will present the findings of that analysis. A copy of the Executive Summary is under Item C-1(a), a list of potential implementation/enforcement issues is included under Item C-1(b), and correspondence received is under Item C-1(c).

## Executive Summary

The North Pacific Fishery Management Council (NPFMC or Council) approved License Limitation Programs (LLPs) for its Groundfish and Crab Fishery Management Plans (FMPs) on June 17, 1995. The U.S. Secretary of Commerce (SOC) approved the proposed rule implementing the Groundfish and Crab LLPs on September 12, 1997. The final rule is expected to be approved within the next few months. Fishing under the final LLPs is expected to begin in January 2000.

Since the approval of the proposed rule for LLPs, members of industry have reviewed the programs and have requested that the Council revise several of the provisions and qualification criteria. In December 1997, the Council began discussions of amendments to the LLP, including changes in the basic eligibility criteria for crab, in the form of additional recent participation criteria. In February 1998, after further discussions and review of preliminary analyses, the Council initiated analysis of an amendment package containing six Proposed Actions to change the Crab and Groundfish LLPs. These changes focus primarily on further capacity reductions and transferability restrictions for the groundfish and crab fisheries.

This document examines the impacts of the proposed actions and constitutes an Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for amendments to the affected FMPs.

### Summary of the Status Quo for Groundfish

Under the current North Pacific Fishery Management Council (NPFMC) Groundfish License Limitation Program (LLP), a single type of groundfish license will be issued. The Groundfish LLP restricts access to groundfish fisheries in the Exclusive Economic Zone (EEZ) off the coast of Alaska and does not restrict access to waters of the State of Alaska. Area endorsements will be issued for the following management areas: Aleutian Islands (AI), Bering Sea (BS), Western Gulf (WG), Central Gulf and West Yakutat (CG+WY), and Southeast outside (SEO). The endorsements will be contained under one of the following General License areas: Gulf of Alaska (GOA), Bering Sea and Aleutian Islands (BSA), or both the GOA and BSA (GOA/BSA) and would not be severable from the licenses.

Licenses will be issued to the owners of record as of June 17, 1995, of the qualified vessels. The owners on June 17, 1995, must have been persons eligible to document a fishing vessel under Chapter 121, Title 46, of the United States Code (U.S.C.). In cases in which the vessel was sold on or before June 17, 1995, and the disposition of the fishing rights was not mentioned in the contract, the catch history would go with the vessel to the new owner. If the transfer occurred after June 17, 1995, the fishing rights would stay with the seller of the vessel unless the contract specified otherwise.

Licenses and endorsements will be designated as Catcher Vessel (CV) or Catcher Processor (CP), and with one of three vessel length designations. In the SEO, 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 or CV designations will be determined on the basis of the activities of the vessel during the period from January 1, 1994, through June 17, 1995, or the most recent year of participation during the EQP. Vessel length classes will be based on the length overall (LOA of the vessel as of June 17, 1995, provided that the vessel conforms with the provisions of the "20% upgrade" and "Maximum LOA" (MLOA) rules defined in the Groundfish and Crab Moratorium (GCM) [NPFMC, 1992].

A total of 2,435 vessels are projected to qualify for licenses under the Groundfish LLP. Of these, 1,793 listed Alaska and 642 listed other states as the state of residence in the most recent vessel documentation data from the Commercial Fishery Entry Commission (CFEC).

Three full years have passed since the Council approved the proposed rule for the Groundfish LLP. Since that time the number of vessels participating in the fisheries has remained relatively stable. There were 1,701 vessels with documented landings in 1995. The total number of vessels remained relatively constant over the next 3 years, dropping by 100 to 1,599 in 1996 and increasing to 1,689 in 1997. There



were 486 vessels that participated in 1998 (on or before February 7). Although the number of participants in almost all vessel classes appears relatively stable over the years, for some classes it is apparent that there has been considerable movement in and out of the fishery. For many of the vessel classes there has been a downward trend in the number of participating qualifiers. This downward trend is not wholly unexpected — the same phenomenon was documented in the analyses examining the Sablefish and Halibut Individual Fishing Quota (IFQ) Program [NPFMC, 1992] and the GCM.

### **Summary of the Status Quo for Crab**

Provisions of the NPFMC's Crab LLP are generally similar to the provisions of the Groundfish LLP. The major difference between the two is the type of endorsements that will be issued. In the Crab LLP endorsements will be issued for crab fisheries on a species and area basis.

The Crab LLP restricts access to the BSA king and tanner crab fisheries in the EEZ. The program does not restrict access within waters of the State of Alaska, nor does it affect crab fisheries that are not managed by the BSA king and tanner crab Fisheries Management Plan (FM,P).

For General Licenses, the Base Qualifying Period (BQP) is January 1, 1988 through June 27, 1992, with the additional provision that any vessel that had crossed over to crab from groundfish (by December 31, 1994) under the moratorium would also qualify for a General License. Vessels meeting these requirements would receive endorsements on the basis of landings in the January 1, 1992, through December 31, 1994, EQP, except for vessels that engaged in the Bristol Bay red king crab fishery, which will use January 1, 1991 through December 31, 1994 as the EQP. Vessels in the Norton Sound king crab fisheries and Pribilof area king crab fisheries will be exempt from the requirements of the BQP, but must have made landings between January 1, 1993, and December 31, 1994, to qualify for a general license and endorsement.

The crab BQP selected by the Council is the same as the BQP chosen for groundfish. This qualification period was selected for both fisheries because it reflects the moratorium years and the Council's long-published control date. A 4-month extension of the moratorium was included in the Council's BQP to match the cutoff date announced early in its Comprehensive Rationalization Program (CRP) deliberations which continued from 1992 through 1995. The three most recent years a fishery was open were used for the EQP. Use of the most recent years for endorsement qualification was selected because those years reflect a fishery's current fleet and participants.

Under the original qualifying criteria, 365 vessels are projected to qualify for crab licenses in areas excluding Norton Sound. Of the total projected qualifiers, 125 vessels are currently owned by Alaskans and 240 are currently owned by residents of other states.

Participation declined from 349 vessels in 1995 to 299 in 1996 and 282 in 1997. Through February 7, 1998, 219 vessels had participated. The lower number in 1998 probably reflects the fact that only a few weeks of the fishing year had passed. Throughout the recent period a total of 410 unique vessels have participated: 19 vessels as catcher processors and 391 as catcher vessels.

The largest decline appears for seine combination catcher vessels. The number of participants reported in the data dropped from 70 in 1995 to 7 in 1997. The numbers of participants in other vessel classes varied within a much narrower range. The number of Alaskan residents participating in the crab fisheries has declined throughout the period, while the number of participating residents of other states fell in 1996 and then rose in 1997.

**Summary of Proposed Action 1: Restrict Transfers of Non-Federally Permitted Vessels**

This action would disallow transfers from vessels that qualified for the Groundfish LLP, but had not obtained a federal fishing permit (FFP) at any point during either the general or endorsement qualifying period. Under the proposed action, persons who had purchased fishing histories through February 7, 1998, would be allowed to receive any licenses for which that fishing history qualified, but any such licenses would not be transferable to other vessels. An option to Proposed Action 1 would allow these licenses to be transferred, as long as the vessel originally assigned to the license is transferred with the license.

Recent developments have caused the analysis of Proposed Action 1 to be changed significantly from the Initial Draft for Council Review submitted in May 1998. On June 4, 1998, NMFS notified the NPFMC that changes to the proposed rule would be implemented in the final rule. One of the changes significantly alters the meaning of a "license transfer" under the Groundfish and Crab LLPs. The final rule will remove requirements that a license be assigned to a specific vessel. This change implies that under the final rule a transfer will not be considered to have taken place if the license is used on one vessel and subsequently on another vessel. The proposed rule implied that a vessel would be specified on the license and that a NMFS-approved license transfer would have to occur in order to use the license on a different vessel. NMFS is developing a discussion paper (to be presented in October) explaining its reasoning and outlining options for changing the regulations so that the vessel is indicated on the license.

NMFS changes in the final rule clearly have implications on the transferability of licenses. Therefore, the analysis of the proposed action looks at transferability under six different cases defined as follows:

Definition 1: The status quo as defined by the proposed rule. Vessels will be specified on the license. (Status Quo – PR).

Definition 2: Proposed Action 1 as originally configured, with no license transfers allowed in cases in which an FFP had not been obtained. In all cases vessels will be specified on licenses. (Proposed Action 1 – PR).

Definition 3: Proposed Action 1, with the option that in cases in which an FFP had not been obtained, transfers would be allowed, but only if the vessel originally assigned to the license is transferred with the license. In all cases, vessels will be specified on licenses. (Proposed Option – PR).

Definition 4: The status quo as defined by the final rule. Vessels will not be specified on the license. (Status Quo – FR).

Definition 5: Proposed Action 1 as originally configured, with no license transfers allowed in cases in which an FFP had not been obtained. In all cases vessels will not be specified on the licenses. (Proposed Action 1 – FR).

Definition 6: Proposed Action 1, with the option that in cases in which an FFP had not been obtained, transfers would be allowed, but only if the vessel originally assigned to the license is transferred with the license. In such cases, licenses would specify the vessel, but in all other cases, vessels would not be specified on the licenses. (Proposed Option – FR).

The Federal Fishing Permit (FFP) history of each of the 2,435 vessels projected to qualify under the Groundfish LLP was examined for the years 1988–1995. A total of 1,928 vessels were found to have obtained FFPs during the years of the LLP qualifying period (QVOWFFP). Of the 507 vessels projected to qualify that were not federally permitted (QVOXFFP), nearly 90 percent are currently owned by residents of Alaska, and all but 7 are 58' LOA or less, as judged by their vessel classes. The 450 Alaskan QVOXFFP represent 25 percent of all Alaskan-owned vessels projected to qualify under the Groundfish LLP.

Under both the final rule and the proposed rule, the proposed action and the proposed option were not judged to create significantly positive outcomes. The only impacts that appear relatively certain to occur are: (1) the negative financial consequences for QVOXFFP, and (2) the complications the action may bring to the implementation and administrative process.

Impacts on catch and catch capacity have the potential to be minimally positive if higher license prices result because of the constraint on supply. Because 1995 mean catch levels for QVOWFFP were higher than for QVOXFFP, there is some chance that overall catch capacity could be affected positively. However, if prices for licenses increase, some vessels that might have chosen to fish in federal waters may instead choose to fish only in state waters. This potential could increase the effort on groundfish in state waters, at least minimally.

Under the final rule, Proposed Action 1 - FR appears to be less restrictive for QVOXFFP than Proposed Option 1 - FR, in that QVOXFFP would be allowed to enter into partnerships and joint ventures under Proposed Action 1 - FR. Under the proposed rule, Proposed Action 1 - PR appears to be more restrictive for QVOXFFP than Proposed Option 1 - PR, in that QVOXFFP would, at least, be able to transfer licenses if vessels were also transferred. Under the proposed rule all partnerships and joint ventures would have been subject to NMFS review, and were therefore not considered a significant issue.

### **Summary of Proposed Action 2: Add Trawl and Non-Trawl Gear Designations to the Groundfish LLP**

Proposed Action 2 would add trawl gear, non-trawl gear, or all gear designations to the Groundfish LLP. The designations would be based on all gears used by the qualifying vessel during the original qualification periods, regardless of area. Additionally, Proposed Action 2 would allow qualifying vessels to augment their gear designations by showing that they have made a significant financial commitment to use any additional gear types in the groundfish fisheries either by:

- Having made a legal landing through February 7, 1998, with the additional gear type, or
- Documenting a significant investment toward the conversion of a vessel or the deployment of the additional gear type through February 7, 1998.

Overall, Proposed Action 2 appears to create positive impacts for the groundfish fisheries. Gear designations will reduce the potential that additional trawl effort will be brought into the fisheries. The positive benefits to the fishery as a whole probably will be offset to some degree by lower prices for individual licenses that do not allow use of trawl gear.

### **Summary of Proposed Action 3: Rescind the Community Development Quota Vessel Exemption**

The Council made exemptions for four categories of vessels from the requirements of the LLP, including an exemption for Community Development Quota (CDQ) groups. The specific language designating CDQ vessels as eligible for exemption in the proposed rule is as follows:

A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and that was, after November 18, 1992, specifically constructed for and used exclusively in accordance with a CDQ approved by the Secretary of Commerce under subpart C of this part, and is designed and equipped to meet specific needs that are described in the CDQ.

Proposed Action 3 would rescind the exemption for CDQ vessels (exemption iv), but would allow any vessels that CDQ groups have previously built within an existing Community Development Plan (CDP) to continue to be used.

The CDQ vessel exemption was initially established as a part of the GCM, which was developed in 1992 prior to the implementation of the first pollock CDQ programs. At the time there was a great deal of uncertainty about how the CDQ program would operate. With the CDQ program established as a

permanent fixture in the fisheries of the North Pacific, and the demonstrated ability of CDQ groups to form mutually beneficial partnerships with industry, there does not appear to be a need to maintain the CDQ exemption in the crab and Groundfish LLPs.

#### **Summary of Proposed Action 4: Clarify the Council's Intent on the Transfer of Catch History**

Proposed Action 4 would clarify the Council's intent that catch history transfers be recognized, except those occurring after June 17, 1995, and where the owner of the vessel at that time was unable to document a vessel under Chapter 121, Title 46, U.S.C.

The proposed action would rewrite the language in the plan amendment and modify the regulations to indicate that the license-qualifying fishing history of vessels whose owners were unable to document their vessels on June 17, 1995, would be extinguished. The change in the language would clarify the Council's intent and ensure that the fishing history of any vessel whose owner was ineligible to document a vessel on June 17, 1995, would not be used to qualify for a license.

The analysis also notes that some persons who are eligible to document a vessel in the U.S. may and do concurrently own and operate fishing vessels in other countries. Many vessels that have been fishing under the flags of other countries may in fact be U.S.-owned, and may have been U.S.-owned as of June 17, 1995, and therefore would not be affected by the proposed action.

NOAA GC has advised the Council that Proposed Action 4 may violate foreign reciprocity agreements listed in the Magnuson-Stevens Act, and would likely be unable to withstand legal challenge. Therefore, they advise the Council not to proceed with the proposed action.

#### **Summary of Proposed Action 5: Require Recent Participation in Crab Fisheries**

Proposed Action 5 would require recent participation in the BSA king and tanner crab fisheries in order to qualify for a license under the Crab LLP. The recent participation period would involve 1 or more years (from 1995 through February 7, 1998). The recent participation requirement would apply to the general license only; if a vessel satisfies the recent participation criteria chosen, it would receive its original license and all of the species/area endorsements for which it qualified under the original criteria. No new species/area endorsements could be earned during the recent qualification.

The specific alternatives addressed are as follows:

Alternative 1: Status quo

Alternative 2: Require participation in 1996

Alternative 3: Require participation in both 1995 and 1996

Alternative 4: Require participation in both 1996 and 1997

Alternative 5: Require participation in the two calendar years from 1997 through February 7, 1998

Alternative 6: Require participation in all three calendar years from 1995 through 1997

Alternative 7: Require participation in all three calendar years from 1996 through February 7, 1998

Alternative 8: Require participation in all four calendar years from 1995 through February 7, 1998

Alternative 9: Require participation at least once between 1996 and February 7, 1998

Alternative 10: Require participation at least once between 1995 and February 7, 1998

Alternative 11: Require participation in any 2 of the 4 calendar years from 1995 through February 7, 1998

Overall, it appears that the proposed action has the potential to reduce the number of LLP qualifiers in the BSA king and tanner crab fisheries. Although requiring participation in 1998 will reduce the fleet by the

largest amounts, because of the very small window of opportunity that results, this choice is less likely to be viewed as equitable. Of the remaining alternatives, those that require participation in both 1996 and 1997 (Alternative 3 and Alternative 5) provide significant fleet reductions and show the least proportional differences between Alaskans and non-Alaskans.

### **Summary of Proposed Action 6: Allow Limited Processing for Catcher Vessels**

Proposed Action 6 will change the Groundfish LLP to allow limited processing for vessels with CV designations. In addition to the status quo, which prohibits processing, two alternatives involving processing limits are included. The three alternatives considered under Proposed Action 6 are:

Alternative 1: Maintain the Status Quo

Alternative 2: Allow limited processing of bycatch amounts up to directed fishing standards, by vessels with CV designations.

Alternative 3: Allow limited processing up to 5 mt round weight (rwt) per day for vessels less than (<) 60' LOA with CV designations, and up to 18 mt rwt per day for vessels greater than or equal to ( $\geq$ ) 60' LOA with CV designations.

Overall, Proposed Action 6 appears to have the potential to create moderately negative to moderately positive impacts on the groundfish fishery. The impacts vary by sector, with the existing H&G Trawl CP and Longline CP fleet likely to be adversely affected by competition from additional vessels with processing capacity. A clear economic rationale that would lead active trawl vessels to upgrade was not readily apparent. In fact, such a conversion may impede the catching capability of a Trawl CV and result in lower net income. Underutilized trawl vessels may be able to take advantage of some niche opportunities. Larger fixed-gear vessels, particularly pot boats, may be able to accommodate the required processing equipment without adversely affecting their catch rates. However, constraints on the number of crew that can be accommodated on most of these vessels, and their modest catch rates, minimize the potential benefits of limited processing. Smaller fixed-gear vessels may be able to add processing equipment and utilize it not only in the groundfish fisheries, but also in salmon fisheries in which they are also likely to participate.

The processing limits of 5 mt rwt and 18 mt rwt imposed by Alternative 3 do not appear to be very effective in limiting the amount processed by fixed-gear vessels, since few are catching that much currently. The limits appear to be more effective in restricting the amounts processed by upgraded trawl vessels. On the other hand, limiting processing to bycatch only will reduce the reasons for vessels to upgrade, particularly for fixed-gear vessels with few target fisheries other than Pacific cod.

Overall, it is unknown how many vessels would undertake the investment necessary to engage in limited processing as proposed in Action 6. The fact that relatively few vessels have made these conversions in the past, and the potentially negative catch capacity consequences, suggest that there will be minimal impact on fishery resources if Proposed Action 6 is implemented.

### **Environmental Assessment**

An environmental assessment (EA) is required by the National Environmental Policy Act (NEPA) to determine whether the action considered will significantly impact the human environment. An Environmental Impact Statement (EIS) must be prepared if the proposed action may reasonably be expected to:

- 1) Jeopardize the productive capability of the target resource species or any related stocks that may be affected by the action;
- 2) Allow substantial damage to the ocean and coastal habitats;
- 3) Have a substantial adverse impact on public health or safety;

- 4) Affect adversely an endangered or threatened species or a marine mammal population; or
- 5) Result in cumulative effects that could have a substantial adverse effect on the target resource species or any related stocks that may be affected by the action.

An EA is sufficient as the environmental assessment document if the action is found to have no significant impact (FONSI) on the human environment.

**Finding of No Significant Impact (FONSI)**

Neither retaining the status quo nor implementing any of the proposed license limitation alternatives would significantly affect the quality of the human environment. Preparation of an Environmental Impact Statement (EIS) on the final action is not required by Section 102(2)(c) of National Environmental Policy Act (NEPA) or its implementing regulations. A final EA and FONSI will depend on the Council's selection of preferred alternatives. This EA will be completed following a Council decision and prior to review by the U.S. Secretary of Commerce (SOC).

## **Implementation/Enforcement Issues**

Several implementation/enforcement issues would be created by the proposed actions. These are presented briefly in this document. If the Council chooses to approve any one of the alternatives, it should also consider these issues.

This paper is meant to give the reader a brief overview of the implementation and enforcement issues that should be considered under each of the six major decision points. A more thorough discussion of these issues can be found in the EA/RIR under the pages listed after the bullet. The road map approach was selected to advise the reader of these issues and provide directions to where they are more thoroughly discussed in the main document.

1. Restrict Transfers of Non-federally Permitted Vessels (pp 40-55)
  - a. Should the vessel be listed on the license (pp. 40-41 and NMFS white paper)
  - b. Treatment of persons that have already made transfers (grandfather provisions p. 53)
  - c. What happens to the license if a vessel is lost?
  - d. What happens if the license holder dies?
  - e. What is the cutoff date for being issued a Federal Fisheries Permit (pp. 41-45)?
2. Add Trawl and Non-trawl Gear Designations (pp. 56-65)
  - a. How is significant financial commitment defined? Options could include a signed and dated contract with a financial institution to purchase trawl gear, wenches, repower vessel, purchase a trawl vessel, etc. by February 7, 1998.
  - b. How should the transfers of catch histories be treated? Can the catch histories from two vessels be combined to generate additional gear endorsements (p. 58)?
3. Rescind the CDO Vessel Exemption (pp. 66-69)

No additional issues identified at this time.
4. Clarify the Council's Intent on the Transfer of Catch History (pp. 70-77)

No additional issues identified at this time.

5. Require Recent Crab Fishery Participation (pp. 78-115)

- a. Should interim permits be issued? Who must have an interim permit? Will interim permits include species, area, length, and CV/CP endorsements, and a vessel identification, as specified in the original LLP? How restrictive will interim permits be in terms of who is eligible to qualify? Can interim permits be transferred? Can groundfish licenses and interim crab permit be severed? How long will interim permits be in effect (pp. 80-82)?
- b. How should combined catch histories be treated (pp. 82-83)?
- c. Should the revised crab LLP include exemptions for lost or destroyed vessels (p. 84)? If so, what are the exemptions?
- d. Should other vessel exemptions be included if the crab LLP is revised (pp. 84-86)?
- e. How should vessels fishing in the Norton Sound red/blue summer king crab fisheries be treated (pp. 87-88)?

6. Limited Procession on Catcher Vessels

- a. How will any of the processing limits be enforced if approved (pp. 118-120)?
- b. Will additional reporting/observer requirements be needed? If so, could this regulation be in place by 2000?



**BLUE FOX FISHERIES**

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David Jincks, President

**RECEIVED**

AUG 10 1998

N.P.F.M.C

August 5, 1998

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

RE: PROPOSED AMENDMENT TO THE LICENSE LIMITATION PROGRAM TO  
REQUIRE RECENT PARTICIPATION IN THE CRAB FISHERY

Dear Chairman Lauber and Council Members:

I have been a commercial fisherman for more than 25 years and fishing is still the sole source of income for myself and family. I am writing this letter to register my strong opposition to the proposal which would require recent participation in the crab fisheries in order to obtain crab licenses under the Council adopted License Limitation Plan, and thereby retroactively change the crab license qualification requirements.

It was in June 1992 that the Council adopted the Moratorium which contained various landing requirements in order to stay in the groundfish and crab fishery. Then in June 1995 the Council adopted a License Limitation Plan which, again, contained a complex set of landing requirements in order to earn a groundfish or crab license for the future. The Council adopted plan was officially approved by NMFS in September 1997.

In early 1996, the 83 foot vessel of which I have been the managing owner of for over 15 years was a total loss as a result of a casualty. In March 1996 my partner and I purchased an 85 foot replacement vessel that was then fishing Opilio crab. At that time the Moratorium rules, as well as the License Limitation Plan as adopted by the Council, were well established and we consummated the purchase of this vessel only after a careful legal review of the license qualifications of the vessel under these existing plans. In the process we invested over 1.5 million dollars in this vessel including its license qualifications.

At the time of our purchase in 1996 the vessel was qualified for crab licenses under the Moratorium and under the License Limitation Plan and not only was the vessel technically

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Richard Lauber, Chairman  
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qualified but it had actively fished crab recently including: 1993 King Crab, 1994 Opilio Crab, 1994 Bairdi Tanner Crab, 1995 Opilio Crab, 1995 Bairdi Tanner Crab and 1996 Opilio Crab. Therefore, we felt we were secure in our investment.

However, we did not fish crab in 1997 and, therefore, under several of the scenarios presented for retroactive changes in license qualification requirements we would lose our right to fish all species of crab in the future even though at the time of our purchase our vessel was clearly eligible for King Crab, Tanner Crab and Opilio Crab.

This effort to change the rules at this late date is simply an effort by a group of high producing crab fishermen who want to squeeze, by regulatory actions, some other people who may be politically weaker out of the system so they can make more money. Hopefully, you will see this attempt for what it is and reject it. If the size of the fleet should be reduced it should be done through a buy back plan that is equitable and treats all qualifying fishermen equally.

I sincerely hope that you take into consideration circumstances such as mine because significant business arrangements have been made in good faith based upon what the Council and Secretary has already adopted, and therefore, any change at this late date in the qualification requirements for licenses is simply unfair and would drastically damage lifetime investments of career fishermen such as myself, even though we followed all of the existing rules at the time of our investment.

Thank you for considering my comments.

Sincerely,

David Jincks  
President  
Blue Fox Fisheries

cc: Bob Mace

# MIDWATER TRAWLERS COOPERATIVE

1626 N. COAST HIGHWAY \* NEWPORT, OREGON 97365



MTC

RECEIVED

AUG 28 1998

N.P.F.M.C

August 24, 1998

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

RE: PROPOSED LICENSE LIMITATION AMENDMENT PACKAGE

Dear Chairman Lauber and Council Members:

As long term participants in the groundfish fishery in the Alaska region, dating back to 1980, MTC would like to offer comment on several aspects of the Proposed License Limitation Amendment Package which we feel would adversely affect our members and which are inappropriate.

First, *Proposed Action To: Add Trawl and Non-Trawl Gear Designations to groundfish LLP.* The proposed action would prohibit licenses and fishing histories earned by vessels employing non-trawl gear to be used on vessels employing trawl gear and licenses and fishing histories earned by vessels employing trawl gear to be used on non-trawl gear vessels with potential Grandfather rights only to persons who can demonstrate significant financial commitment to apply a non-trawl license or fishing history to a trawl operation (and the reverse) as of February 7, 1998.

This proposed action is a result of concerns that the LLP, as originally adopted, will allow vessels that have never used trawl gear to employ trawl gear in the future which would potentially increase harvesting capacity overall. This concern is legitimate, is supported by the analysis and it is our belief that when the Council originally adopted LLP in June 1995 it was never intended (by Council or Industry) that groundfish licenses earned on fixed gear vessels could be used on vessels employing trawl gear because as the analysis states the result would be to increase harvest capacity of these vessels which is inconsistent with the goals of LLP.

Captain R. Barry Fisher, President  
Phone: (541) 265-9317 • Fax: (541) 265-4557

Therefore, MTC supports that aspect of the proposed amendment so as to make the final LLP rules consistent with the original intent, but in so doing MTC urges the Council to recognize the legitimate business transactions that have occurred since June 1995 and award Grandfather rights to persons that can demonstrate a significant financial commitment to apply a non-trawl license to a trawl operation by either having made a landing with trawl gear or made a significant investment in conversion of a vessel to deploy trawl gear by February 7, 1998.

However, as the amendment relates to prohibiting licenses earned by trawl vessels being utilized to employ fixed gear, the proposal is not supported by the analysis and is not consistent with either the intent or the goals of LLP for the following reasons:

1. In June 1995 our Association, along with others, specifically presented testimony to the Council on the importance of allowing trawl vessels the flexibility of moving to fixed gear in the future so as to facilitate future regulations potentially restricting trawling in the cod fisheries. Our members have long term catch histories in the cod fisheries and without this flexibility would potentially lose their right to participate in a fishery that many of our members helped develop beginning in the early 1980s. It is for this reason that in June 1995 when the Council adopted the LLP it left open the flexibility of allowing licenses earned on trawl vessels to be used to employ fixed gear. It was only inadvertent that the reverse was permitted.
2. There is no information in the analysis which would indicate that there would be any negative results by allowing licenses earned on trawl vessels to be used in employing fixed gear. In fact, allowing trawlers to utilize fixed gear will most likely reduce the harvest capacity of these vessels and thereby be consistent with the goals of LLP.

Therefore, for the reasons cited it would be inappropriate for the Council to now adopt a regulation which would eliminate the flexibility of trawlers to use fixed gear and reduce the ability of our members to earn a living in the future in a fishery in which many of them have participated since the early 1980s. It is important to note that most of our member vessels are of the smaller 85 foot class trawler and, therefore, more dependent upon the cod fishery (where the ability to fish fixed gear is most important) because they simply do not have the carrying capacity to be competitive in the larger Bering Sea pollock fishery. It is only fair, that as more and more of the cod quotas are allocated away from trawl gear, that these long term participants be allowed to convert to fixed gear if necessary to stay in business.

#### ***Second, Proposed Action 5: Require Recent Participation in Crab***

Some members of the crab industry are proposing an amendment to the LLP to include a recent participation clause with various new landing requirement options in addition to the qualification requirements of the LLP. This proposal would completely change the eligibility requirements for the crab fishery more than three years after the Council adopted LLP. MTC opposes retroactive changes to the License Limitation Program at this late date which would have the result of disenfranchising some of our members from receiving crab licenses who would otherwise be entitled to them under the License Limitation Plan adopted by the Council in June 1995 for the following reasons:

1. The development of the License Limitation Program for the groundfish and the crab fishery was a comprehensive effort involving give and take on both sides. Many participants in the crab fishery wanted to be assured of the flexibility of engaging in the groundfish fishery with pots in the future and, of course, many participants in the groundfish fishery wanted to make certain that their investments in pots and crab equipment would be protected in the future and that they would receive crab licenses. As a result of weighing all of the competing interests and issues the Council adopted a comprehensive plan which was part of an industry consensus at that time, taking into consideration all of the competing interests. In fact, it should be noted that the crab industry, as a result of these negotiations and Council decisions, received an extremely broad participation window in which to qualify for a groundfish license as compared to trawlers. Advocates for the crab industry should not now be able to have the qualification requirements for the crab fishery isolated and modified to be more restrictive and to be applied retroactive.

2. This proposal is primarily targeted at trawlers, many of which were originally designed and operated as crabbers, but which are now diversified and capable of fishing cod and crab with pots and groundfish with trawls. The crab industry has found this group to be vulnerable for the reason that many combination trawl/crab vessels have opted not to fish in many of the more recent crab seasons because of a combination of factors including small quotas, poor prices and the fact that they had other opportunities. It is inappropriate for vessel owners to lose opportunity by virtue of seeking diversification and reducing effort on resources when stock size and the economics of the fishery are poor and after the rules for future participation were established.

3. Over three years has lapsed since the Council adopted LLP. That's too long of a period of time in which the industry has been doing business in good faith based upon the LLP as adopted by the Council for there to be any consideration, at this late time, of radical changes to the qualification period requirements. Legitimate industry participants have, in the normal course of business, sold and purchased boats, gear and licenses and directed their operations all in reliance on the License Limitation Plan as adopted by the Council over three years ago and which almost one year ago was approved by NMFS. This reliance was legitimate and taken in good faith and people should not be put into a position of losing their investments by retroactive changes to regulations of this type. This proposed amendment is not required for conservation of the resource but rather is being proposed by one segment of the industry so that they can squeeze others out so that there will be more money in the end for them. This activity, when it is taken retroactive, must be rejected.

4. If the Council is of the opinion that effort in the crab fishery is too high then the appropriate course of action is not to change the rules retroactive but rather to adopt a non-discriminatory Buyback Plan which allows those who want to stay in the business to purchase the licenses of those who are willing to voluntarily sell out. The goal of some to make the Buyback Plan more affordable is not a justification to treat people unfairly by changing the original qualification requirements over three years after the original Council action.

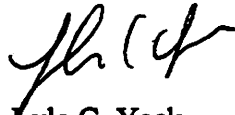
MTC has been commenting on issues and appearing before the NPFMC since 1983. We represent a group of small to medium size trawlers (some of which also fish crab) which are for the most part family owned and who have been in the fishing business for many years. We have always advocated consistency within the Council process and we have supported the Council process. In that regard, it is extremely important for Industry to be able to depend upon the integrity of the actions of the Council, because just as in the case of LLP it is sometimes several years after the Council takes action before the regulation becomes permanent. It is for this reason that we feel so strongly that when considering amendments to the LLP that it only be done to the extent that the amendments are consistent with the original intent of the Council and that no amendments be permitted that are inconsistent with that original intent or that would disenfranchise fishermen who have been conducting business in reliance on and consistent with those Council decisions.

Sincerely,

MIDWATER TRAWLERS COOPERATIVE



R. Barry Fisher  
President



Lyle C. Yeck  
Vice President

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

## F/V Seadawn Fisheries, Inc.

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

F/V Seadawn

September 3, 1998

RECEIVED  
SEP 8 1998

N.P.F.M.C.

Mr. Richard Lauber, Chairman  
North Pacific Fishery Management Council  
605 W. Fourth Avenue, Suite 306  
Anchorage, Alaska 99501

RE: PROPOSED LICENSE LIMITATION AMENDMENT PACKAGE

Dear Chairman Lauber and Council Members:

I am the managing owner of a 124 foot combination trawl/pot vessel which has been engaged in the fisheries managed by this Council almost continuously since 1973. I would like to comment on two of the proposed actions which could seriously damage the fishing future of my vessel, notwithstanding, almost 25 years of participation.

1. **Proposed Action 2: Add Trawl and Non-Trawl Gear Designations to Groundfish LLP**

My vessel has extensive landing history in the trawl fisheries for groundfish and in the crab fishery with pots, however, it did not make its first groundfish delivery with pots until April 1998 and, therefore, would be prohibited from fishing cod and other groundfish with pots in the future if this proposed action is approved by the Council in its entirety. There is no reason (cited in the Analysis or otherwise) to prevent trawlers from fishing groundfish with pots. In fact, from the Analysis it is apparent that a trawler that converts to fishing groundfish with pots will have a lower catch capacity.

The reason Proposed Action 2 was initiated was to prevent the opposite, i.e., prevent fixed gear boats from upgrading to trawl gear which would increase capacity. The Analysis, on page 64 and 65, reports the potential for a large percentage of upgrades from fixed gear to trawl which would result in a substantial increase in harvest capacity. The Analysis reaches the conclusion, which is obvious, that by preventing fixed gear boats from upgrading to trawl gear will "have a positive impact on overall catch capacity" by closing the door to this potential for increasing capacity.

However, there is no discussion or analysis on the impacts that would result from prohibiting trawlers from utilizing pot gear to fish groundfish. The Analysis is totally devoid of any information on the very subject that would reduce the opportunities for vessels such as mine. However, the Analysis does specifically provide, on page 61, a statement that "the proposed action results from presumptions that catch capacity of trawl vessels is greater than the catch capacity of non-trawl vessels." In addition, the catch comparisons of pot vessels in all classes is dramatically smaller than the catch history of trawl catcher vessels in the same category (Table 31, page 61). The only conclusion that is reasonable from a reading of the Analysis is that if trawl vessels convert to fishing groundfish with pots, the capacity of those vessels will decrease.

Furthermore, aside from the Analysis it is important to recognize that flexibility and diversification is the backbone of most successful fishing businesses. Many trawl/catcher vessels, including mine, have a long standing catch history in the trawl cod fishery which is continuing to be reduced by regulation and allocation to gear types which are seen as more selective in their harvest ability. Therefore, it is only reasonable to allow those cod trawl fishermen who are being squeezed out of their traditional fishery to participate in the cod fishery with pots when at the same time the harvest capacity of the vessel is also thereby being reduced.

It is my recollection that the Council intentionally left open the option for trawl vessels to fish groundfish for pots for the very reasons I have cited and it was only by inadvertence that the window was left open for fixed gear vessels to upgrade to trawl which could result in a large increase in harvest capacity. The fact that the Council should probably now close the opportunity of fixed gear vessels to upgrade capacity is no reason at all to also prohibit trawl vessels to downgrade in capacity to pots or long lines so as to allow them to continue in their traditional fisheries.

## **2. Proposed Action 5: Require Recent Crab Fishery Participation**

In the seven years from 1991 through 1997 my vessel participated in the crab fishery in all years except for one, yet it would be disqualified from any future participation in the crab fishery by 7 out of the 10 alternatives proposed other than status quo. I would be thrown out of the crab business even though my vessel, which was built as a crab vessel, qualifies under the Moratorium and under the License Limitation Program adopted by the Council in June 1995, and participated in the crab fisheries in a majority of its 25 years in the fishing business.

I believe my circumstances clearly reflect the unfairness of this proposal. In addition, I would like to add the following comments in opposition to this proposal:

A. License Limitation was adopted by the Council in June 1995 as a comprehensive package involving both groundfish and crab, and involving consensus agreements between the Industry which resulted in a qualifying period for crab and groundfish that was the same for both fisheries but with the provision that the LLP allowed a more lenient crossover for crab boats into groundfish than in the reverse. Now, certain crab groups are proposing this amendment to change, retroactively, the qualification requirement for the crab fishery without considering similar changes for the groundfish fishery. The Council should not allow itself to become a



party to this attempt by the crab groups to segregate their fishery and squeeze out other legitimate participants who are legitimately entitled to licenses under the Council's Comprehensive Plan by retroactive amendments.

B. For the Bristol Bay Red King Crab, Bairdi and Opilio Tanner Crab fisheries, in the years in which there were openings during the recent participation window, the average annual quotas were less than one-half of the average quotas during the License Limitation endorsement period. For example, during the four years of the endorsement period, the average annual quota in the Opilio fishery was over 200 million pounds, but in the 3 full years of the recent participation window (1995-1997) being proposed the annual quota just averaged 77 million pounds. The unfairness of the proposal is obvious for the reason that during those three years the quotas and, also the market conditions for crab, were extremely low resulting in situations where those who were diversified and had other opportunities legitimately took those other opportunities. The result should not now be to lose fishing rights that were previously legislated by the Council just so those who have developed this proposal can make more money.

C. This proposal, as engineered, discriminates against Alaska residents. Table 21 on page 38 of the Analysis describes the LLP qualified vessels that did not participate in the recent participation window (1995-1998). In total, seventy-two qualified vessels did not participate at all during the new proposed qualification window, of which more than 50% are Alaska residents.

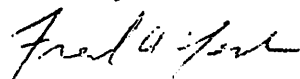
D. The proposed amendment also includes options to allow exemptions to the new qualification period for lost or destroyed vessels, vessels under construction and vessels that participated in 1998. I don't object to the owners of these otherwise qualified licenses from being allowed to participate, but how can it be considered equitable that these licenses would be allowed to participate with no recent catch history, when vessels such as mine, which only miss one year out of the last seven, would potentially be excluded.

E. If the size of the fleet must be reduced for effective management purposes, why cut out the boats that have a tendency of not fishing when resource conditions are poor. The more prudent and justifiable course would be to select the producers most likely to fish regardless of resource conditions and which are the highest producers and, therefore, the hardest to control. So, if resource management and protection is the goal, the more prudent choice would be to consider eliminating the licenses of all large boats (i.e., over 125') and if that isn't sufficient eliminate a specified percentage of boats that continued to fish when the crab resource was at its lowest levels with the boats to be eliminated selected starting with the highest producers. If cuts are necessary for resource protection these options make more sense than forcing out the boats that only fish when the resource is strong. I am being somewhat facetious in this proposal because I believe none who legitimately qualify for a license should, at this late date, have their rights taken away from them, but the options in this paragraph clearly would be more effective and just as fair and objective as those proposed (just different people would be adversely impacted) if crab resource management requires a reduction in the number of vessels.

In conclusion, I would like the Council to be aware that I and others similarly situated have made large investments in our vessels and gear so that they can be diversified and fish groundfish with trawls and crab with pots. We did not make these changes or make sudden investments as opportunists to squeak into some qualification period, but rather we are long term participants in the crab fisheries and also have continuous recent participation in every year (but one) from 1991 through 1997. Under these circumstances it is certainly not fair to change the rules against us retroactively and forever prohibit us from utilizing our long term investments in the crab fishery in the future, when the primary purpose of the change is to simply cut out more boats so that the remaining number will have a bigger slice of the pie. If the number of qualified participants is too many for the fishery to be effectively managed, the only way to be fair to all for the short term is to institute more restrictive pot limits and for the long term an equitable crab license buyback plan could be adopted.

Thank you for considering my comments.

Sincerely,



Fred A. Yeck

September 16, 1998

Richard B. Lauber  
Chairman

And

Clarence G. Pautzke  
Executive Director

North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Ave.  
Suite 306  
Anchorage, Alaska 99501-2252

RECEIVED  
SEP 24 1998  
N.P.F.M.C

Dear Mr. Lauber and Mr. Pautzke,

On October 10, 1997, we entered into an agreement to purchase the crab fishing rights of the F/V All American. The All American sank during the opilio crab season in 1996. The vessel was a total loss, and never again participated in the crab fishery. Prior to the sinking, the vessel had participated in every opilio, baridi and Bering red king crab season since at least 1991.

We have utilized the rights from the All American on the F/V Beverly B, beginning with the 1998 opilio season.

The recent participation alternatives before the Council apparently do not provide for the circumstance where a vessel has been lost or destroyed. See section 7.1.3 at page 84 of the Analysis of the License Limitation Amendment Package dated August 21, 1998. We would respectfully request that the Council include an exemption in the recent participation requirements for rights similar to ours in which the vessel was lost and unable to participate as may be required. Alternatives which would result in a loss of fishing privileges to us, without some provision for a lost vessel, include:

Alternative 2: Requires fishing in the 1996 Bering Sea red king crab fishery, and we would therefore lose that endorsement

Alternative 3: Same requirement as alternative 2

Alternative 4: Requires fishing in 1997 for both opilio and Bering Sea red king crab, and requires fishing in the 1996 Bering Sea red king crab fishery. We would lose both the king crab and the opilio endorsements under this alternative.

Alternative 5: Requires fishing in 1997; both the king crab and opilio endorsements would be lost.

Alternative 6: Same impact as alternative 4

Alternative 7: Same impact as alternative 4

Alternative 8: Same impact as alternative 4

Alternative 9: No impact on our license

Alternative 10: No impact on our license

Alternative 11: The Bering Sea red king crab endorsement would be lost, if the intent is to require fishing in two different calendar seasons in the endorsed fishery during the period. If on the other hand the requirement is fishing in any two fisheries during the specified period, then our license would not be impacted, since we participated in one Bering Sea king crab and three opilio crab fisheries during the specified period. I believe that latter interpretation is what is intended, and if that is the case, this alternative would have no impact on our license.

The Council has in the past given consideration to the impact of losing a vessel on the rights to a license. For example, in determining the endorsements for a general license, the Council included a "Lost Vessel" clause under which an endorsement would be granted if the reason for failure to participate in a particular fishery was the loss of the vessel before the Endorsement Qualifying Period.

Two alternative methods that the Council could employ to ensure that our license is valid are:

- A. Waive the present participation requirement for vessels which acquired a moratorium right and fished for the first time in 1998. See Section 7.1.4.2 at page 85 of the Analysis of the License Limitation Package.
- B. Include a reconstruction to achieve a crab catcher configuration as a "vessel under construction". 7.1.4.3 of the Analysis proposes a construction exemption to the present participation requirement. As proposed, the "construction" exemption implies "new" construction, and would not apply to our situation, if that is accurate.

The first of these two alternatives would squarely fit our situation; the latter is less certain as it hinges on a definition of "construction" or "reconstruction".

We have invested heavily to convert the Beverly B to a crab catcher vessel, purchased a full compliment of fishing gear, and of course incurred a substantial expense in acquiring the crab fishing license. The total investment is conservatively over \$500,000, not including the basic cost of the vessel. We placed this license back into service as soon as was feasible after our acquisition in October, 1997.

We would be happy to provide any documentation that the Council might consider important to making a decision on this matter, and I wish to thank you in advance for your consideration.

Sincerely,



John Garner  
Proteus Fisheries, LLC  
4225 23<sup>rd</sup> Ave. W.  
Seattle, Washington 98199  
206-285-2169

# SAGA SEAFOODS PARTNERS, L. P.

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

September 21, 1998

RECEIVED  
SEP 24 1998

N.P.F.M.C

RE: Capacity Reduction and Buyback Group (CRAB) Plan

Dear Clarence:

I am writing in response to your letter and information packet dated July 13, 1998 regarding a buyback business plan developed by the CRAB Group, Inc. (CRAB) for the BSAI crab fishery.

I am writing on behalf of the vessel F/V AJ, O.N. 599164. The F/V AJ is a Moratorium qualified vessel with BSAI fishing endorsements that include Crab Fisheries/Pot Gear. The F/V AJ has crab catch history in the years 1990, 1991, 1992, 1993, 1997 and anticipated in 1998. The F/V AJ is a replacement vessel for the F/V Ronnie C which sank in 1989. The F/V Ronnie C fished from 1978 until sinking in 1989. All catch history from the F/V Ronnie C is transferred to the F/V AJ.

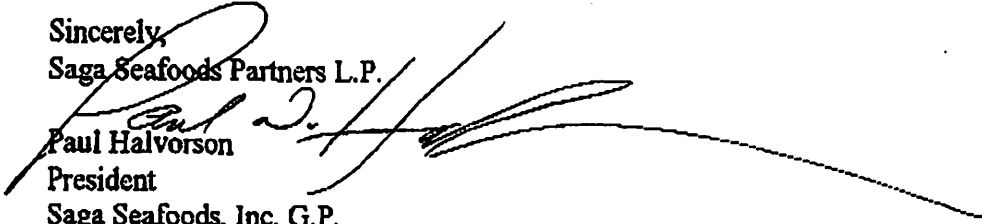
While I applaud the intent of the NPFMC to establish a plan to fairly and effectively reduce fishing effort in the North Pacific, I object to the CRAB plan. Specifically the dates proposed as the time brackets for qualification in the Participation and Dependence Period ("the PDP"). The proposed PDP dates are the nearly exact dates when the F/V AJ was not available to be active in the crab fishery.

The proposed PDP start date is December 31, 1994. The F/V AJ was leased to an offshore catcher-processor group as a captive catcher vessel on January 5, 1995. This date is five days after the beginning of the currently proposed PDP start date. The proposed PDP ends September 29, 1997. The F/V AJ participated in the 1997 king crab fishery making landings in the first week of November of 1997, barely 30 days after the proposed PDP would close qualifying landings.

The owners of the F/V AJ are concerned that the proposed PDP dates unfairly target the vessel. The F/V AJ is depending on participation in the crab fisheries currently legally available to it in order to survive as a business.

We ask the Council to revisit the CRAB plan and specifically the PDP time period guidelines. And if a buyback program is instituted, to not penalize the F/V AJ for exploring other opportunities during this narrow window in time.

Sincerely,  
Saga Seafoods Partners L.P.

  
Paul Halvorson  
President  
Saga Seafoods, Inc. G.P.

**CLIPPER SEAFOODS, LTD.**

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**RECEIVED**  
SEP 25 1998  
N.P.F.M.C.

September 25, 1998

Richard B. Lauber  
North Pacific Fishery Management Council  
605 W. 4<sup>th</sup> Ave, Suite 306  
Anchorage, AK 99501-2252

Fax no: (907) 271-2817

No. of pages: 3

**RE: Analysis of Proposed License Limitation Amendment Package**

Dear Chairman Lauber:

Recent developments in Washington D.C. will change the future of the Pollock industry and possibly end the inshore/offshore debate forever (we can only hope). Meanwhile, the rest of the ground fish and crab industry wait for some positive action that will move towards comprehensive rationalization of the rest of the fisheries.

License limitation is the next step and will go a long way towards solving the overcrowding and race for fish that currently exists on the fishing ground. I support all of the Council's efforts on LLP and encourage you to press on by taking final action on the amendment package that will be before you.

Members of the industry that have been struggling under the present system have waited a long time for LLP. Please continue to move forward and in doing so encourage NMFS to do the same.

**Comments on the six amendments:**

**PROPOSED ACTION 1: RESTRICT TRANSFERS OF NON-FEDERALLY PERMITTED VESSELS**

We are in favor of this amendment.

**PROPOSED ACTION 2: ADD TRAWL AND NON-TRAWL GEAR DESIGNATIONS TO THE GROUND FISH LLP**

I agree with the analysis and favor this amendment. I was, however, surprised that the analysis only focused on the impacts of non-trawl entries into the trawl fisheries. As participants of the longline industry we also have serious concerns about vessels that may be marginal as trawlers switching to fixed or longline. If you close the door, please lock it from both sides.

North Pacific Fishery Management Council  
Page 2

**PROPOSED ACTION 3: RESCIND THE CDQ VESSEL EXEMPTION**

CDQ vessels should not be exempt from LLP. There are plenty of vessels that will qualify under this program. We don't need to add anymore.

**PROPOSED ACTION 4: CLARIFY THE COUNCIL'S INTENT ON THE TRANSFER OF CATCH HISTORY**

We favor this action.

**PROPOSED ACTION 5: REQUIRE RECENT CRAB FISHERY PARTICIPATION**

No comment.

**PROPOSED ACTION 6: ALLOW LIMITED PROCESSING FOR CATCHER VESSELS**

We strongly oppose this amendment. The whole purpose of LLP is to limit participation and restrict vessels to there historical operation in the fisheries. This amendment would open the door for almost the entire crab fleet to convert to catcher/processor or to longline CP.

The analysis points out that many of these vessels lack bunk space and that it might not be economical to convert. This is pure hogwash if you believe that fishermen only do things that make economic sense then we would not ever need LLP. The analysis obviously doesn't understand about CCF funds or has never heard of Bristol Bay (salmon).

The amendment proposes limiting processing to 18 mt per day. Clearly in the fixed gear fisheries that would be no limitation at all. Over the last three years weekly production in the Bering Sea on Pacific cod averaged around 3,800 mt/week with an average fleet of 26 vessels daily production per vessel is around 20 mt/day.

The analysis does not consider onboard splitting and salting which under current definition is processing. This process requires no refrigeration equipment and only a few more crew members.

To say that vessel owners will not upgrade in the future because it's to expensive assumes that the price of the fish products will remain constant. How can you know that? The purpose of LLP is to close the door. If you want to change fisheries or operations then buy a different license.

**North Pacific Fishery Management Council**  
**Page 3**

**Thank you for your time to consider my comments. Please move forward on these amendments.**

**Best regards,**



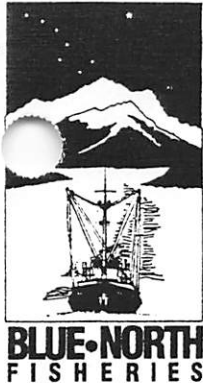
**Dave Little**

**P.S.- Please send a note to Washington D.C. regarding SR1221:**

**Dear Senator:**

**If you're going to give away 95 million dollars in taxpayer dollars please don't let it be re-invested into our already over capitalized fisheries.**





4502 14th Ave. N.W.  
Seattle, WA 98107  
(206) 782-3609  
Fax (206) 782-3242

September 24, 1998

Rick Lauber  
North Pacific Fishery Mgmt. Council  
605 West 4th Ave., Suite 306  
Anchorage, AK 99501

Mr. Lauber,

I'm strongly opposed to the allowance for limited processing of cod fish on catcher vessels. The N.P.F.M.C. should stay with the original intention of the moratorium and L.L.P. program. To compromise those programs and begin letting unqualified vessels into other fisheries, or to let a catcher boat process, puts undo pressure on the qualified fleet.

Sincerely,

Michael Burns

RECEIVED  
SEP 28 1998  
N.P.F.M.C


**NEPTUNE MARINE PRODUCTS, INC.**

P.O. Box 17417

Seattle, WA 98107

5330 Ballard Ave NW

Phone (206) 789-3790 FAX (206) 789-1795



Mr. Rick Lauber, Chairman  
 North Pacific Fishery Management Council  
 604 W. 4th Ave. Suite 306  
 Anchorage, AK 99501-2252

September 28, 1998

Faxed to 907-271-2817

N.P.F.M.C

SEP 28 1998

RECEIVED

RE: License Limitation Amendment Package  
 Proposed Action 6: Allow Limited Processing for Catcher Vessels.

Dear Mr. Lauber and Council Members,

As the Council deliberates the LLP amendment package during the upcoming Seattle meeting, I would like to encourage the Council to allow limited processing on catcher vessels targeting Pacific cod with pots.

As you are aware, the pot fishery for cod has proven itself to be the cleanest method available to harvest Pacific cod. Modifications developed for pot gear have resulted in a very selective fishery that can be conducted with little or no bycatch of either halibut or crab. The Alaska Dept. of Fish & Game recently concluded tests to analyze gear modifications that can further reduce the bycatch of crab in cod pots. The recently published results were very encouraging. The low cost modification reduced crab bycatch below its already low level. It also appeared to increase the catch of Pacific cod in the modified pots. As has been the case in the past with the Council granting an exemption from halibut bycatch caps for groundfish pots, I would like to urge the Council to recognize that clean fisheries should be allowed to continue their development. Allowing limited processing on pot boats targeting Pacific cod would provide an incentive for additional development of this clean gear type. Under the Magnuson-Stevens Act, the NPFMC is required to develop plans and take actions to minimize bycatch. Voting to allow limited processing in this particular fishery would be a positive sign that the Council recognizes their responsibilities to promote clean fishing gears that minimize bycatch.

Allowing limited processing on catcher vessels would allow fishermen to add value to their catches. Value added processing has been encouraged by the State of Alaska in numerous instances to help increase the revenue derived from the resources harvested in Alaska and North Pacific waters. The current State waters cod fishery allows processing on catcher vessels in the Gulf of Alaska. The State also encourages value added processing in the salmon industry. Why shouldn't this apply to the harvest of Pacific cod also? The construction of the Alaska Seafood International processing plant in Anchorage is another example of the State supporting value added processing in the Alaska seafood industry. Value added processing, whether it be secondary processing or additional on board processing, will benefit the State of Alaska as well as those fishermen that are allowed to process their catch.

Opposition to allow limited processing on catcher vessels comes from the existing shorebased processors and existing processing vessels in the fishery. This opposition is not unexpected.

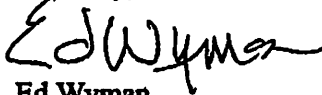
**SPECIALTY PRODUCTS FOR FISH AND SHELLFISH POTS**

Page 2 - NPFMC - LLP Amendment Package

According to the analysis, the actual effect on these sectors would be minimal due to the assumption that relatively few vessels will convert due to their vessels not being suitable and the expenses involved. For those with suitable vessels, this processing option is a means to engage in the cod fishery by optimizing the value of their catches. Allowing limited processing on cod pot vessels would also disperse the fleet over a much larger area reducing gear conflicts. While it might not be popular with some sectors, the limited processing option for pot fishing vessels is an action that minimally affects those opposed and provides positive long term benefits by reducing bycatch and increasing the value of the catch.

In closing, I would like to urge the Council to allow limited processing in the Pacific cod pot fishery. It would be a positive step in allowing the continued development of the cleanest gear type used in the cod fishery.

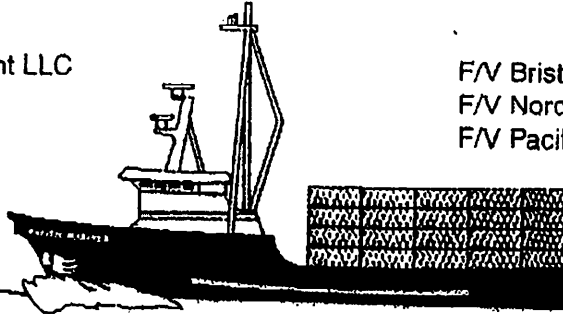
Sincerely,



Ed Wyman

Kaldestad Management LLC  
F/V Aleutian Mariner  
F/V Arctic Mariner

F/V Bristol Mariner  
F/V Nordic Mariner  
F/V Pacific Mariner



5470 Shilshole Ave. N.W. #410 • Seattle, WA 98107 • (206) 783-3018 FAX (206) 783-3145

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SEPTEMBER 17, 1998

NORTH PACIFIC FISHERIES  
MANAGEMENT COUNCIL  
605 WEST 4TH AVENUE, SUITE 306  
ANCHORAGE, AK. 99501-2252

RE: PROPOSED LICENSE LIMITATION PLAN FOR CRAB FISHERIES  
RECENT PARTICIPATION CRITERIA AND LOST OR DESTROYED VESSELS

DEAR COUNCIL MEMBERS,

AS ONE OF THE OWNERS OF THE F/V NORTHWEST MARINER, I AM WRITING YOU CONCERNING THE RECENT PARTICIPATION CRITERIA FOR CRAB LICENSES UNDER THE PROPOSED LICENSE LIMITATION PLAN (LLP). THE NORTHWEST MARINER WAS A DEDICATED FIXED GEAR VESSEL WHICH RELIED PRIMARILY ON CRAB FISHERIES FOR ITS INCOME AND PARTICIPATED IN VIRTUALLY ALL THE BERING SEA AND ALEUTIAN ISLAND CRAB FISHERIES SINCE 1988 WHEN WE PURCHASED THE VESSEL ( FORMERLY THE OCEANIC SINCE HER LAUNCHING IN 1980) . THE VESSEL AND ALL HER CREW WERE TRAGICALLY LOST ON JANUARY 15TH. 1995 ON THE WAY TO THE OPILO GROUNDS AFTER RECEIVING A TANK CHECK AT ST. PAUL ISLAND.

SINCE THE NORTHWEST MARINER HAD NO LANDINGS IN ANY OF THE YEARS BEING CONSIDERED IN THE RECENT PARTICIPATION REQUIREMENT FOR THE CRAB LLP, THERE WOULD BE NO LICENSE ISSUED FOR A REPLACEMENT VESSEL. WITH THE ADVENT OF THE RECENT PARTICIPATION CLAUSE FOR CRAB LLP KEEPING ANY LICENSE RIGHTS IN LIMBO , ALONG WITH THE LEGAL AND EMOTIONAL ISSUES FROM LOSING A VESSEL AND HER CREW, WE HAVE NOT HAD ADEQUATE TIME TO FIND A REPLACEMENT VESSEL FOR THE NORTHWEST MARINER TO MAKE ANY LANDINGS TO SATISFY THE RECENT PARTICIPATION REQUIREMENTS. IT WOULD BE UNFAIR TO DENY THE NORTHWEST MARINER A CRAB LICENSE DUE TO INABILITY TO MAKE A RECENT PARTICIPATION LANDING WHILE GRANTING LICENSES TO OTHER VESSELS WHICH HAVE FAR LESS HISTORY IN AND RELIANCE ON THE CRAB FISHERY.

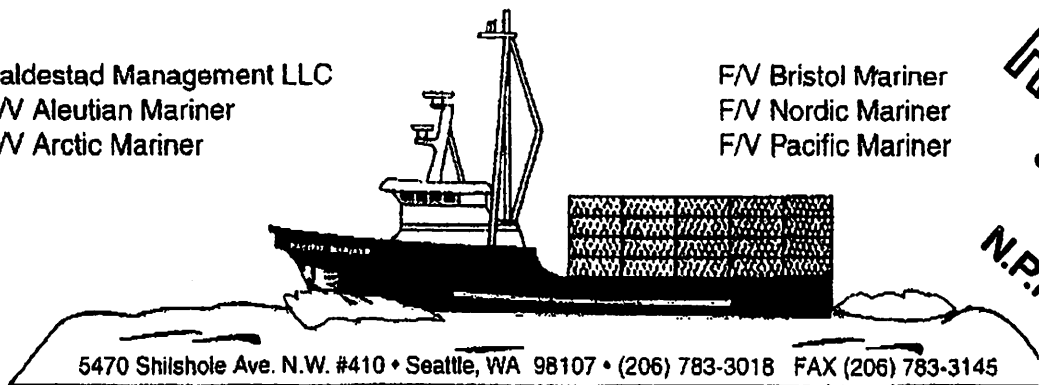
I FEEL THE COUNCIL SHOULD CHOOSE AS AN OPTION FOR MAKING A LANDING FOR REPLACEMENT VESSELS FOR LOST OR DESTROYED VESSELS A DATE NO SOONER THAN JANUARY 1, 2000.

SINCERELY,

KEVIN L. KALDESTAD

Kaldestad Management LLC  
F/V Aleutian Mariner  
F/V Arctic Mariner

F/V Bristol Mariner  
F/V Nordic Mariner  
F/V Pacific Mariner



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SEP 28 1998  
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SEPTEMBER 26, 1998

NORTH PACIFIC FISHERIES  
MANAGEMENT COUNCIL  
605 WEST 4TH AVE., SUITE 306  
ANCHORAGE, AK. 99501-2252

RE: LICENSE LIMITATION PLAN; RECENT PARTICIPATION

DEAR COUNCIL MEMBERS,

I AM IN SUPPORT OF ADOPTING ALTERNATIVE #4 AS THE PREFERRED ALTERNATIVE FOR RECENT PARTICIPATION FOR NPFMC CRAB LLP. ALTERNATIVE #4 GIVES THE DEDICATED CRAB A REASONABLE CHANCE FOR ECONOMIC SURVIVAL IN THE CURRENT STATE OF THE CRAB FISHERIES IN THE BERING SEA/ALEUTIAN ISLANDS.

AS A CREWMAN, VESSEL CAPTAIN AND VESSEL OWNER FOR THE PAST 25 YEARS IN THE CRAB FISHERIES, I HAVE SEEN THE RISE AND FALL OF CRAB POPULATIONS IN ADAK, DUTCH HARBOR, PRIBILOFS AND BRISTOL BAY. AS DEDICATED CRABBERS, WE HAVE STUCK WITH THE CRAB FISHERIES THROUGH ALL THE FLUCTUATIONS. OUR VESSELS DEPEND ALMOST ENTIRELY ON CRAB AS A SOURCE OF REVENUE. TO ALLOW PART TIME CRAB VESSELS THE ABILITY TO ENTER CRAB FISHERIES AS THEY CHOOSE WOULD ADD ORE PRESSURE ON AN ALREADY OVERCAPITALIZED CRAB INDUSTRY. THE FLEET NEEDS TO BE HELD TO A LEVEL THAT EXISTS PRESENTLY FOR ECONOMIC STABILITY FOR DEDICATED CRABBERS TO EXIST, WHICH IS WHAT ALTERNATIVE #4 WOULD ACCOMPLISH. CRAB VESSEL REVENUES HAVE DECLINED ON THE AVERAGE IN THE 1990'S, FROM ~ \$1,700,000 IN 1990 TO ~ \$600,000 IN 1997, AND ADDITIONAL VESSELS GRANTED LICENSES TO FISH CRAB WOULD DIMINISH REVENUES FURTHER. IN ADDITION, THERE ARE SAFETY FACTORS TO BE CONSIDERED. AN INCREASE IN VESSELS FISHING IN OLYMPIC-STYLE FISHERIES, ALONG WITH DIMINISHED REVENUES, INCREASES THE PRESSURE TO FISH HARDER AND COULD POTENTIALLY CAUSE SAFETY CONCERNS. IT IS WELL DOCUMENTED THAT CRAB FISHERIES HAVE HAD HIGH INJURY AND DEATH RATES IN RECENT YEARS AND MANAGEMENT NEEDS TO ACT TO HELP THE INDUSTRY LESSEN, NOT INCREASE, THESE RATES.

YOUR SUPPORT IN CHOOSING ALTERNATIVE #4 FOR RECENT PARTICIPATION FOR CRAB LLP WILL, I BELIEVE, BE THE BEST ALTERNATIVE FOR A SAFER AND MORE STABLE CRAB INDUSTRY.

SINCERELY,

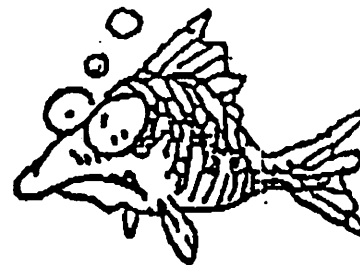
KEVIN L. KALDESTAD

North  
Pacific  
Longline  
Association

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SEP 29 1998

N.P.F.M.C



Agenda C-1

September 27, 1998

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

RE: Proposed License Limitation Amendments

Dear Rick:

The freezer-longliner fleet has spent the last ten years developing a conservation-oriented fishery for cod and other groundfish. We look to LLP to protect that fishery, and to restrict vessels to fisheries upon which they have been historically dependent. In that light, we wish to comment on two of the LLP amendment proposals.

PROPOSED ACTION 2: ADD TRAWL AND NON-TRAWL DESIGNATIONS TO THE GROUNDFISH LLP

We support this amendment. The analysis stresses the need to stop non-trawl vessels from entering trawl fisheries. It is just as important to prevent trawl vessels from entering non-trawl fisheries - it's a two-way street.

PROPOSED ACTION 6: ALLOW LIMITED PROCESSING FOR CATCHER VESSELS

We can support the proposal to allow processing of bycatch amounts of groundfish, only (Alternative 2). We oppose Alternative 3, which would allow processing of up to 18 mt round weight per day (5 mt for vessels under 60').

The 18 mt limitation is no limitation at all - over the last three years freezer-longliners have averaged about 20 mt per day in the BSAI cod fishery. Allowing catcher vessels to process 18 mt would be like allowing more freezer-longliners into the fishery, which is fully subscribed. The purpose of LLP is to prevent that.

This proposal was developed at a time when crab stocks were low, the idea being to give the crab fishermen something to do. Now the tables have turned. Cod stocks in the BSAI are at a 20-

year low, and there is barely enough to go around. Crab stocks have rebounded strongly. The coming year's Opilio season will be 196 million pounds (average harvest 109 million pounds). This years' red king crab guideline harvest level is more than twice last years,' at 16.4 million pounds. The crab fleet has plenty of crab, and should not be invited to process cod.

Finally, many fishermen have called to suggest that the analysis is flawed in that it assumes that catcher vessel owners will not make the investment to process and freeze product. There are plenty of CCF accounts out there. Fishermen have a long history of overcapitalization, even where massive investments are required - look at the surimi fleet.

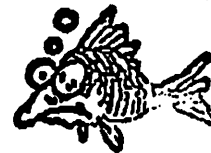
Please do not allow "limited processing" to destabilize the fixed gear fisheries through overcapitalization.

Sincerely,

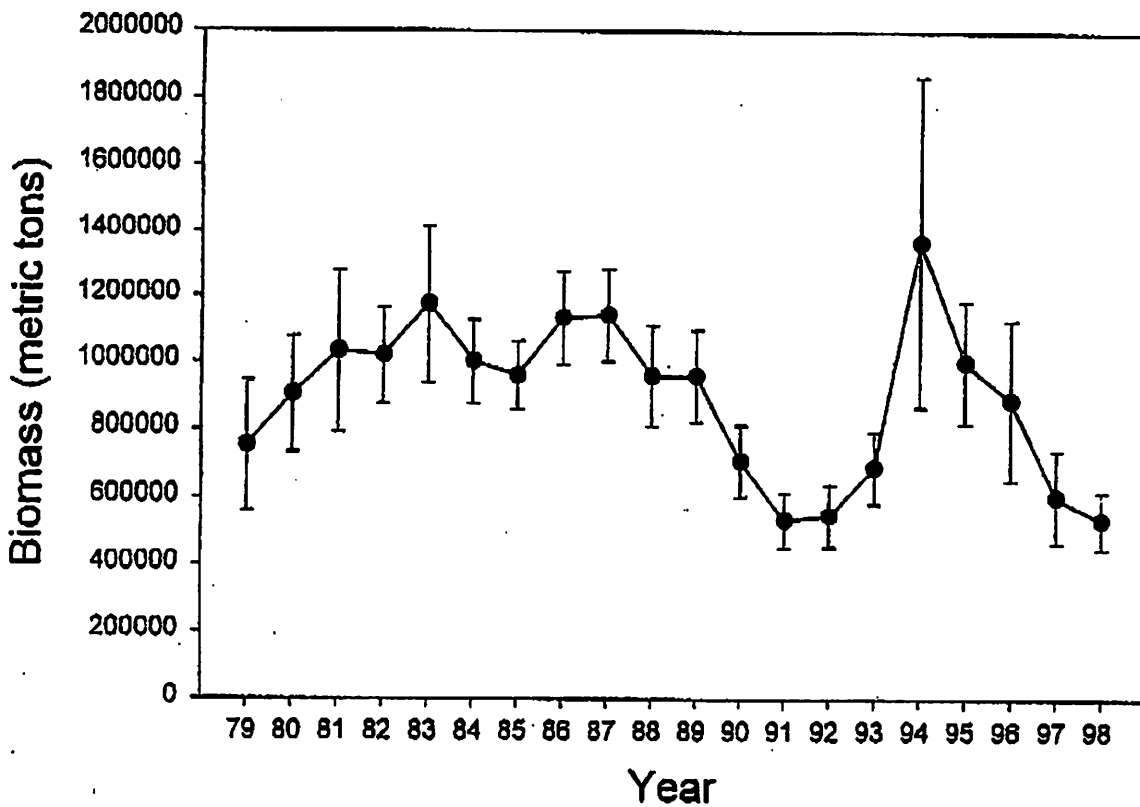


Thorn Smith

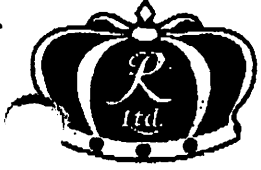
**DRAFT**



**Pacific Cod Survey Biomass estimates for the eastern Bering Sea Shelf, 1979-1998**







**Regal Fish Ltd.**

4025 21st Avenue West Seattle, Washington 98199  
(206) 283-0224 FAX (206) 283-0403

**RECEIVED**

SEP 29 1998

N.P.F.M.C

September 29, 1998

Mr. Richard B. Lauber  
*North Pacific Management Council*  
605 West 4<sup>th</sup> Ave.  
Anchorage, AK 99501-2252

Re: Proposed Action 6: Allow Limited Processing for Catcher Vessels (Agenda C-1(a))

Dear Mr. Lauber

I am writing this letter in strong opposition to the above referenced proposal that is slated to be discussed by the Council in the upcoming meeting. We have been working diligently for years developing the longlining business, and have paid the price to make it what it is today. Your proposal will destroy what we have taken so long to build. Longlining is one of the most efficient fisheries in operation today in Alaska, and because of our method of fishing, we do not harm the environment. Our bycatch records are extremely low comparatively, and we have reduced our halibut mortality to 11%. In addition, we've worked hard to successfully develop a program that virtually eliminates seabird bycatch problems.

As catcher vessels seek ways to generate revenue, they *will* refit their vessels to enter the groundfish fishery. Presently the BSAI cod stocks area at a 20 year low, and additional entries into the fishery will put those who have worked hard to build the fishery into jeopardy, if not out of business.

Sincerely,

John K. Sjong,  
Regal Fish Ltd.

6/10 for J. Sjong

September 29, 1998

Mr. Rick Lauber, Chairman  
North Pacific Fishery Management Council  
605 West 4th Avenue, Ste. 306  
Anchorage, Alaska 99501-2252

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SEP 29 1998  
N.P.F.M.C

RE: Agenda Item C-1, License Limitation Plan Amendments

Dear Rick,

The purpose of this letter is to explain the necessity of Alternative 4 of Proposed Action 5 (Require recent crab fishery participation), scheduled for the October Council meeting in Seattle. Alternative 4 is a necessity for three reasons: The proposed industry funded Bering Sea/Aleutian Islands crab license buyback, current conditions of the crab industry, and agreements made between the crab and groundfish industries in the early 1990's.

#### BS/AI Crab Industry Funded Buyback

History has shown that the most debilitating issue facing any buyback program (industry or government funded) is latent capacity. The greater the latent capacity, the greater the chance of failure. Historical examples of buyback programs fraught with latent capacity are: Washington State Salmon Buyback, East Coast Groundfish Buyback, British Columbia Salmon Buyback, and the United Kingdom Decommissioning Scheme. None of these programs were able to retire any substantial amount of effective capacity. All of these fisheries were license limited with loose entry requirements resulting in latent capacity (for example, it has been estimated that 75% of current East Coast Groundfish licenses are latent). Most of the time this occurs because license limitation is chosen as a solution to declining harvests and increasing effort. However, by the time the license limitation plan is in place it is too late. More vessels are licensed than the amount which traditionally fished the resource, an economic collapse typically occurs, and a huge amount of latent capacity exists as few vessels can depend upon the resource. Those that never were dependent on the fishery continue fishing for their dependent fishery with license in hand from the previously licensed fishery.

The Bering Sea crab industry is showing all the telltale signs of continuing this trend. The Northern Economics analysis projects 365 vessels to qualify for B/S/AI crab fisheries. However, the number of vessels which depend upon crab (i.e. are not financially viable without it) is in the low 200's. This can be shown by determining which fisheries the traditional crab fleet depends upon for financial viability. For the last five years, vessels have averaged \$573,619 during Opilio, while averaging only \$94,200 and \$71,400 for King and Bairdi crab respectively. Put another way, 77.6% of average vessel revenue is generated in the Opilio season.

The implications of this are that a vessel can not depend upon either King crab or Bairdi. This is further evidenced by the closure of King crab in both 1994 and 1995 and closure of Bairdi in 1997. Basically, the traditional crab fleet which depends upon crab fisheries for financial viability can be determined by looking at those vessels which consistently fish Opilio crab.

The number of vessels making Opilio landings between 1995-1998 has averaged 235. Analysis of the State of Alaska's Commercial Fisheries Entry Commission lists show that there is some speculation going on even within this group of crabbers. Due to this speculation, the true number of core crab vessels which are economically dependent on crab is most likely somewhat less than 200 vessels. This is also shown in the analysis under alternative 8 which requires landings in each of the years between 1995-1998. One would expect that if a vessel is truly financially dependent on crab, the vessel would have made numerous landings in each one of these years. 1998 should be included even though the data only includes Opilio, since Opilio represents 77.6% of all revenue generated by a crabber. The analysis shows only 193 vessels made landings during this period.

I support Alternative 4 which requires crab landings in 1996 and 1997 because it is fair while still eliminating most of the latent capacity present within the industry. Alternative 4 would qualify 245 vessels (after reductions and exemptions). This amount is somewhat greater than the number of vessels financially dependent upon crab. However, it also allows flexibility for those vessels which have extenuating circumstances.

Qualification of any amount of crab vessels greater than 245 will result in undue latent capacity. This latent capacity will hinder, if not destroy, any chance of the industry funded crab buyback. It makes no sense for the crab industry to buy out vessels which are opportunistic and speculative. Little effective capacity could be retired with the amount of money available for the buyback. Basically, vessel owners would be asked to pay more for the program than the benefits they would receive from a smaller fleet size.

However, with qualification of 245 vessels, the industry funded Crab Buyback Plan would have a very good chance of buying out effective capacity. In this way, the Crab Buyback would actually receive greater benefit in decreased fleet size, than they pay out to support the buyback loan.

In summary, Alternative 4 should be implemented because it is a fair way to achieve a fleet of mostly true crabbers (financially dependent on crab). By doing so, the industry funded Buyback will then have a very good chance of approval and becoming a success.

### **Current Conditions of the Bering Sea Crab Industry**

The Bering Sea crab industry is in a very poor economic state at the present time. The attached chart reveals that average vessel revenues are at the same level experienced during 1983-1984 adjusted for inflation. It was during this time that many crab vessels crossed over to become trawlers. The current situation is just as desperate. Although difficult to determine, it is most likely that the average vessel revenue is below the average economic break even point. This implies that vessels are having a very difficult time paying the bills.

Where vessel owners used to maintain vessels to the best of their ability, vessels owners are now forced to scrimp on maintenance. I believe that the prolonged decreased average revenues crabbers are experiencing will become apparent soon for the traditional crab fleet (especially if some severe weather is experienced), as may be evidenced by an increase in vessel sinkings and injuries.

There is a very important difference between traditional crabbers which are dependent on crab and those latent vessels which are not dependent. Latent vessels do not need to earn enough money during crab season to cover their fixed costs, while traditional crabbers do. Thus, it makes sense for vessels from other industries to participate in the short King and Bairdi seasons, even when average revenue levels are very low.

For example, as long as a vessel is able to cover fuel, bait, and food expenses (as well as applicable insurance) it makes sense for a vessel to fish a short season such as King or Bairdi. These variable costs are quite low for these fisheries since they are so short. It should be expected that many vessels will then enter these fisheries to cover a portion of their fixed costs (i.e. interest, taxes, licenses, legal, accounting, phone, a portion of insurance, and vessel maintenance). These vessels which are not dependent on crab are mainly trawlers and longliners as well as 24 large crab vessels fishing in other countries, which have healthy industries. For example, trawlers averaged \$1,731,770 in

1996 and over \$2 million in 1995. Basically, they are able to cover all fixed costs in their dependent fisheries while making pure profit in King and Bairdi.

Unfortunately, the traditional crab fleet must be able to cover nearly all fixed costs during the Opilio season. This has been exceedingly difficult as average revenues during the Opilio fishery have dropped dramatically. In 1995 average Opilio revenue was \$711,462 then dropping almost in half to \$365,811 in 1996 and remaining depressed in 1997 at \$409,292. The situation looks just as bleak for the future in regards to Opilio. A lack of recruitment means that we have already seen the peak in abundance, and quota levels will begin to drop off dramatically. Unfortunately, the nagging influence of the Japanese economic crisis will continue to depress all crab prices. Canadian and Russian harvests of Opilio and King continue to depress prices as well.

What this means is in a few years traditional crab fishermen will be forced to rely on another resource as Opilio quotas are slashed and prices do not compensate for the decline. However, there are no new crab resources to develop. Bairdi is currently closed and shows no sign of recovery. This leaves King as the future mainstay of the traditional crab industry. However, with increased King crab abundance and revenues, latent capacity will come flooding in resulting in an inability of crabbers to pay for their fixed costs.

The result of the above will be an economic disaster for the traditional crab fleet if Alternative 4 is not implemented.

#### Industry Agreements on Crossovers

During June 22-28 of 1992, the North Pacific Fishery Management Council met and took final action on the vessel Moratorium. The July 7, 1992 Council Newsletter states, "There are no further restrictions on a qualified vessel crossing over from one fishery to another (groundfish, crab, or halibut) during the moratorium, regardless of past participation." This agreement was struck between the various fishing industries at this time.

We are now at a point where halibut has gone Individual Transferable Quota, and both the groundfish and crab industries are attempting to eliminate the crossover provision. This is fine as long as both sides are willing to eliminate the ability to crossover. An important fact to consider is that it is relatively easy for both trawlers and longliners, as well as any other vessel which so desires, to lease crab pots and make a landing in the crab fishery. At the same time, it is not an easy task for a crabber to attach trawl gear to the vessel and make a landing.

For the above reason, crossovers should be eliminated, and Alternative 4 of Proposed Action 5 should be implemented. Alternative 4 will eliminate many of the speculative vessels which do not depend on crab, but made a landing due to the ease of doing so with the desire to obtain a license for a fishery in which they rarely fish.

### Conclusion

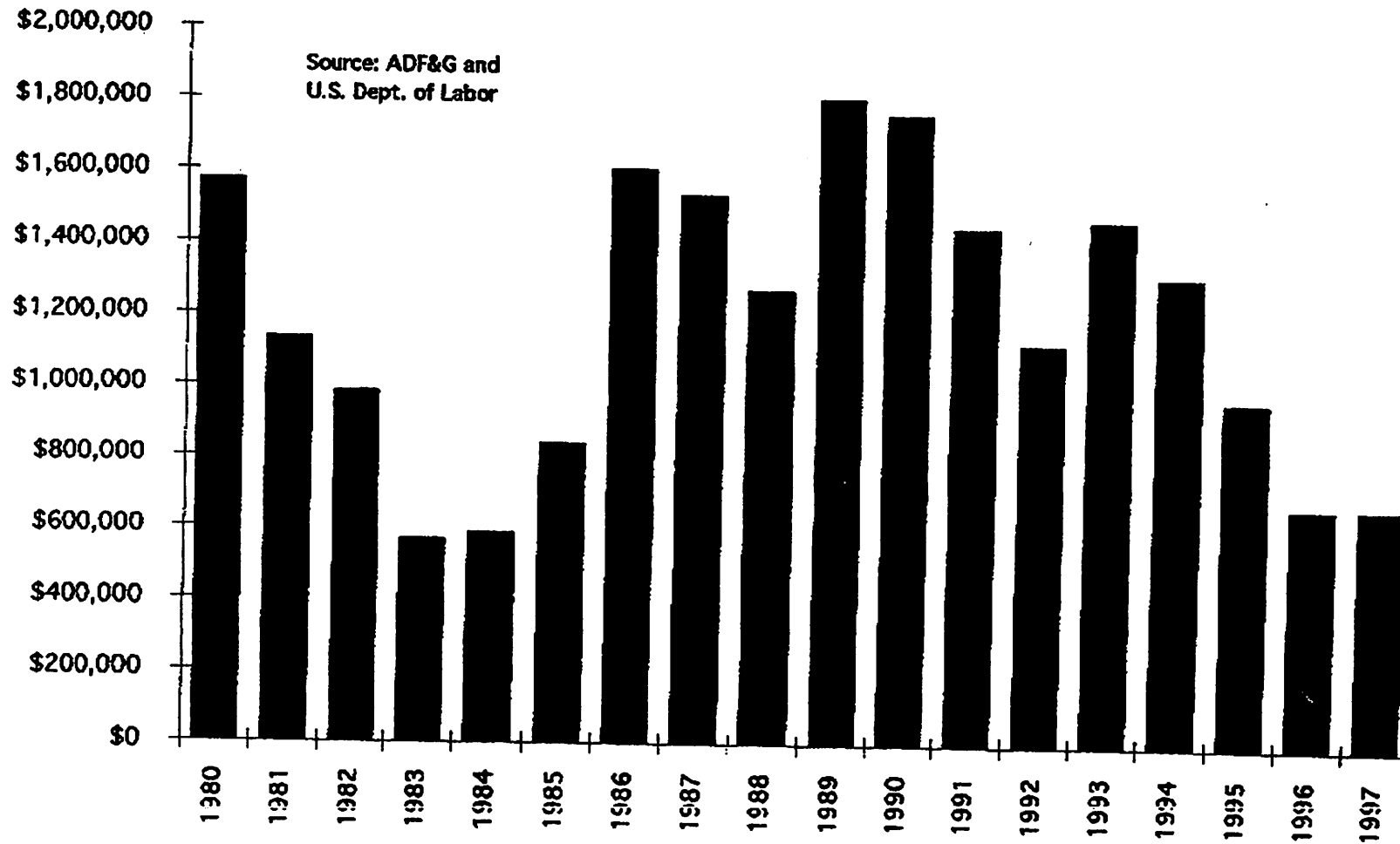
The Bering Sea/Aleutian Islands crab industry is currently in an economic recession due to low prices and an abundance of vessels. Many of these vessels fish speculatively and opportunistically, which results in economic hardship upon the traditional crab fleet which is economically dependent upon crab. For the industry funded Crab Buyback Plan to have any chance at success and to avert the very real possibility of an economic collapse of the traditional crab industry, Alternative 4 of Proposed Action 5 should be implemented.

Sincerely,



Edward Poulsen  
Kris Poulsen & Associates

### Average Crab Vessel Revenue Adjusted for Inflation



September 26, 1998

Mr. Richard Lauber  
Chairman  
North Pacific Management Council  
605 West 4th Avenue, Suite 306  
Anchorage, Ak. 99501-2252

RECEIVED

SEP 29 1998

N.P.F.M.C

Re: License Limitation Program Amendments  
Proposed Action 5: Require Recent Participation in the Crab Fisheries

Dear Mr. Lauber,

I am an owner / operator of the F/V Jeanoah . I qualify to receive a license to fish for the Bering Sea / Aleutian Islands ( BSAI) crab under the original Bering Sea Crab License Limitation Program (LLP). Since the original qualification for the BSAI crab LLP, the F/V Jeanoah has fished for crab in the BSAI during 1997 and the fall of 1998. in order to ensure that my vessel can continue to qualify to fish crab in the BSAI, I respectfully request that the Council choose Alternative # 9. Any Aternative that is more restrictive than Alternative #9 would extinguish my elegibility to fish for BSAI crab with my vessel.

I have been commercial fishing in Alaska for 16 years. The F/V Jeanoah is solely involved in the pot and longline fisheries and is homeported in Kodiak. I am an Alaska resident, and my wife and I are raising two children. With the developments that are occuring in the commercial fishing industry, it is very important for success and survival of my fishing buisness to continue to have the opportunity to particilpate in the BSAI crab fisheries.

I would appreciate your consideration of my circumstances when you make your decision with regard to the qualifying years for recent participation in the BSAI crab LLP.

Sincerely Yours,

*Jerry Bongen*

E. Bongen  
P.O. Box 3523  
Kodiak, AK 99615



**Alaska Groundfish Data Bank**

**RECEIVED**

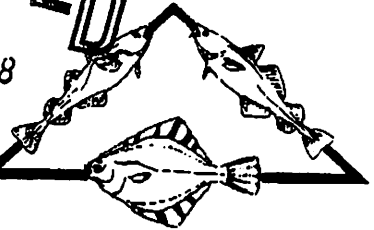
Box 2298 • Kodiak, Alaska 99615

TO: RICK LAUBER, CHAIRMAN  
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

SEP 29 1998

RE: LICENSE LIMITATION  
DATE: SEPTEMBER 29, 1998  
SENT BY FAX: 1 PP

N.P.F.M.C.



**COMMENTS ON THE PROPOSED AMENDMENTS TO THE LICENSE  
LIMITATION PROGRAM - AGENDA ITEM C-1(a)  
SUBMITTED BY ALASKA GROUND FISH DATA BANK**

**PROPOSED ACTION 2: ADD TRAWL AND NON-TRAWL DESIGNATIONS TO THE GROUND FISH LLP**  
The members of Alaska Groundfish Data Bank support issuing trawl designations under the License Limitation Program, BUT do not support issuing non-trawl designations.

Our reasoning is as follows:

1. There is continuing concern, rightly or wrongly, that trawl gear may be less ecologically friendly than fixed gear. If this assumption is correct then allowing vessels with only a fixed gear history to become trawlers would be contrary to the current efforts to evolve toward more ecologically sound fisheries management. (We note that the effect of trawls on habitat has been intensively studied with mixed results while there is little data on fixed gears' effect on habitat.)
2. Issuing only trawl designations under LLP allows vessels without fixed gear history to change to fixed gear if desired. For those concerned about trawl effect on habitat this would seem to be a desirable option.
3. AGDB also supports the grandfather clause allowing persons who have purchased a vessel with only non-trawl history but have made a significant investment in conversion to trawl gear to be grandfathered in with a trawl designation. We feel those who have made business decisions based on the Secretary's approval of the LLP package should not be disadvantaged by this amendment.

**PROPOSED ACTION 5: REQUIRE RECENT CRAB FISHERY PARTICIPATION**

AGDB supports option 10: participation at least once between 1995 and February 7, 1998.

AGDB supports a recent participation provision in the crab LLP to limit participation to active vessels. However, considering the changes in the crab fisheries abundance since license limitation was proposed penalizing a crab fisherman for missing one year seems overly onerous.

Requiring at least one landing in one of the years 1995 thru February 7, 1998, gives all those with crab endorsements under LLP a reasonable opportunity to qualify for a crab license under this proposed amendment. Vessels which qualified under LLP but have no recent participation in any of the years 1995 thru February 7, 1998, would seem to be reasonable.

Further, it should be noted that LLP was not designed to reduce the fleet in any fishery, but to freeze the fleets in preparation for future fleet reduction/management measures such as buybacks, co-operatives, IFQ's or other fleet rationalization measures.

Thank you for your consideration of our comments

Chris Blackburn, Director  
Alaska Groundfish Data Bank

GULF MIST, INC.

September 29, 1998

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SEP 29 1998

N.P.F.M.C

Mr. Richard Lauber  
North Pacific Fisheries Management Council  
605 West 4<sup>th</sup> Avenue  
Anchorage, AK 99501-2252

Dear Mr. Lauber:

I am writing to oppose Proposed Action 6 under the License Limitation Program. Proposed Action 6 would allow processing on small vessels which are now fishing for shore-based plants. We believe Proposed Action 6 would significantly impact the freezer longliner fleet. We have operated a freezer longliner in the Bering Sea since 1988. We have helped to build a fishery that produces top quality product and demands top dollar in today's market. We are able to target specific species with minimal bycatch and have reduced our halibut mortality to 11 percent.

The market for Pacific Cod has not always been good, there were several years when we had very tight margins. Now when market conditions improve, we are faced with severe competition for a resource at its 20 year low. Giving vessels which have traditionally fished crab or delivered to shore based processing plants the opportunity to re-fit their vessels and turn them in to catcher processors would significantly impact the freezer longliner fleet. The analysis says re-fitting catcher vessels to process is not cost effective and will result in few upgrades, however we believe some of those vessels have earned significant amounts in past crab fisheries, etc. and will convert vessels to catcher processors.

The freezer longliner fleet is struggling as it is with more regulations and lower quotas. It is also one of the cleanest and most efficient fisherys and one which should be preserved. Adding competition from other sectors of the industry will only cause these existing traditional vessels to go out of business.

Please do not adopt Proposed Action 6.

Sincerely,



Gulf Mist, Inc.  
Mary E. Boggs

15030 HIGHWAY 99 • LYNNWOOD, WASHINGTON • 98037  
PHONE 425-742-8609 • FAX 425-742-8699

**ALASKA CRAB COALITION**

3901 Leary Way N.W. Ste. 6

Seattle, Washington 98107

206 547 7560

Fax : 206 547 0130

Email: [acc-crabak@msn.com](mailto:acc-crabak@msn.com)

**RECEIVED**  
SEP 29 1998  
N.P.F.M.C.

Date: September 28, 1998

To: Rick Lauber, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Alaska 99501-2252

FROM: Arni Thomson, Executive Director

*Arni Thomson*

RE: COMMENTS ON THE PROPOSED AMENDMENT TO THE LICENSE  
LIMITATION PROGRAM; RECOMMENDATION FOR ADOPTION  
OF PROPOSED ACTION 5, ALTERNATIVE 4

The legal and technical comments of the Alaska Crab Coalition are attached. As noted in the comments, the ACC has chosen to supplement the data base used in the analysis, by using State of Alaska Commercial Fisheries Entry Commission (CFEC) public records, lists of permit holders and vessel owners, to more closely define the actual vessels that are economically dependent on the crab fisheries, versus the sporadic, potentially latent crab vessels. The ACC has been utilizing these records along with ACC members' observations on fleet composition for over ten years, as part of its goal to implement a limited entry program for Bering Sea/Aleutian Islands crab fisheries. The ACC has referred to its use of the CFEC data base in public testimony before the NPFMC as recent as February 1998. This is particularly critical when defining the vessel class of trawl CVs originally qualified in the crab LLP, Tables 14, 15, 16 and 17, on pages 31, 32. The Council's data base apparently utilizes a combination of historic and current information, whereas the ACC is using the most recent information available. However, the estimates of the number of qualified participants identified under the proposed alternatives, closely matches ACC's estimates based on the CFEC records.

The ACC has determined that there are not 71 trawl CVs as indicated. The ACC estimates 43 CVs qualified for the crab LLP, of which only 9 have participated in each of the years, 1995, 1996 and 1997. Recently the ACC has crosschecked its estimate with the list of pollock trawlers that could be eligible as harvesting vessels in the proposed pollock cooperatives, as defined in S. 1221. This list, developed from NMFS records for 1995, 1996 and 1997 was submitted by Brent Paine of United Catcher Boats to the U.S. Senate for the Manager's Amendment, S. 1221, September 17, 1998. Although ACC's analysis refers to 39 CVs, this most recent information revealed 4 more CVs that

qualified for crab in the original qualifying period. Thus, there are an estimated 43 pollock vessels qualified in the crab LLP.

In addition, the ACC has also used the most recent Alaska Department of Fish and Game Shellfish Economic Performance Reports and the National Marine Fisheries Service Economic Status of the Groundfish Fisheries Off Alaska to supplement the economic analysis, as illustrated in Tables 18-21 on pages 36-38.

**Comment to the North Pacific Fishery Management Council  
On Proposed Action 5  
Proposed License Limitation Amendment Package**

**September 25, 1998**

**The Alaska Crab Coalition ("ACC") and the Capacity Reduction and Buyback ("CRAB") Group provide this comment to the North Pacific Fishery Management Council ("Council") on Proposed Action 5 of the Proposed License Limitation Amendment Package ("Package") addressed in the Analysis of Proposed License Limitation Amendment Package ("Analysis"), dated August 21, 1998.**

**The ACC is a nonprofit trade association representing owners of Bering Sea crab fishing vessels. The ACC strongly supports management measures for the improvement of conservation, safety, and economic conditions in the Bering Sea/Aleutian Islands ("BSAI") crab fisheries. Adoption of management measures that would provide these improvements through the reduction of excess harvesting capacity is an immediate priority of the ACC.**

**An estimated 128 BSAI crab fishing vessels, including virtually all members of the ACC, qualify for participation in the groundfish fisheries under the License Limitation Program ("LLP"). These vessels are, as history has shown, especially well-suited for conversion to trawling. Consequently, the ACC has a direct interest in, and strongly supports, improved management of the groundfish fisheries.**

**The ACC works to ensure that all fishery management measures affecting its members are fair and equitable. This is always an important objective of the ACC, but is**

## I. Summary

The essential purpose of Proposed Action 5 is to prevent the influx of latent capacity into the BSAI crab fisheries, by not allowing the participation of certain vessels that are, and have been in recent years, dependent upon other fisheries. The principal effect of approval and implementation of that Action would be to disqualify certain vessels primarily or fully engaged either in groundfish fisheries or in crab fisheries other than those of the BSAI.

The total number of vessels anticipated to be licensed under the original criteria of the LLP for the major BSAI crab fisheries is 365. An analysis of State of Alaska Commercial Fisheries Entry Commission ("CFEC") lists of permit holders and registered vessel owners shows that Proposed Action 5, Alternative 4, would disqualify from BSAI crab fisheries approximately 120 pot, longline, and trawl vessels that are dependent upon other fisheries, leaving 245 vessels qualified after transfers and exemptions. See Table 81, page 112, Analysis.

It is most notable that, since the Council voted to establish the LLP qualification dates on June 17, 1995, registrations for the major BSAI crab fisheries have dropped to a range of 196 to 253 vessels, very far below the 365 authorized by the LLP. From this, it should be concluded that approval and implementation of Proposed Action 5 would not cause any significant redeployment of actual capacity dependent on the BSAI crab fisheries. Rather, the significant effect would be to prevent the influx of latent capacity into the BSAI crab fisheries.<sup>2</sup>

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<sup>2</sup> There is a distinct similarity between the economic dependence of the Bering Sea crab fleet on the Bering Sea opilio crab fishery and the economic dependence of the Bering Sea trawl groundfish fleet on the BSAI pollock fishery. For the years, 1995 - 1997, 74% of the BSAI crab income for a fleet that ranged from 226 to 253 vessels, was derived from the opilio fishery. The implications are that crab vessels cannot economically depend upon the king crab derbies or the bairdi fishery. This is further evidenced by the closure of the Bristol Bay king crab fishery in 1994 and 1995, followed now by the closure of the bairdi fishery in 1997 and 1998. The traditional crab fleet, which depends upon crab fisheries for financial viability, is best determined by reviewing the average number of vessels that have participated in the opilio crab fishery (an average of 235 vessels, 10 fewer than would be qualified under Proposed Action 5, Alternative 4—see Table 81, page 112, Analysis). The economic significance of the bairdi and king crab fisheries, however, is noted in historic catch records and the recent recovery, after stringent conservation measures, of the Bristol Bay king crab fishery in 1996, 1997 and the projected harvest for 1998 of 16 million pounds.

Turning to the trawl groundfish fleet and the pollock fishery in the years 1995 and 1996, 69% of the BSAI groundfish income for a fleet that ranged from 181 to 192 vessels was derived from the BSAI pollock fishery. In 1997, the corresponding percentage was 74%. The number of vessels is not yet available. The BSAI trawl fleet had a gross revenue of \$373,400,000 in 1995 and \$332,500,000 in 1996. In 1997, that revenue was \$302,000,000. Of this, \$265,900,000 and \$223,400,000 were derived from the pollock fishery in 1995 and 1996, respectively. The corresponding amount for 1997 was \$223,000,000. The average BSAI trawl vessel revenues for groundfish during those years, were

enter crab fisheries, even in marginal resource conditions, when the fisheries upon which those vessels usually depend are declining or depressed.

It is evident that owners and crews of vessels that are dependent on the BSAI crab fisheries would benefit economically from the approval and implementation of Proposed Action 5. It must also be recognized that those participants would benefit, as well, from the standpoint of safety, because latent capacity would be prevented from entering the BSAI fisheries and, thus, from intensifying the extremely hazardous race for fish. Those participants would gain, further, by way of improved conservation, because the high risk of exceeding guideline harvest levels ("GHLs") would not be increased by the influx of additional vessels that have not regularly and recently participated in the BSAI crab fisheries. **It is essential to recognize that fishing for crab in the BSAI is the most dangerous occupation in the United States, that important crab stocks in the BSAI are in depressed condition, and that the financial condition of the fleet is the poorest in more than a decade.**

In the fisheries upon which the 120 identified vessels depend, economic conditions, while difficult, have been far superior to those in the BSAI crab fisheries. Were the case otherwise, a large number of those vessels would have participated both regularly and recently in the BSAI crab fisheries. As noted above, total BSAI groundfish trawl revenues in 1995 and 1996 were \$373,400,000 and \$332,500,000, respectively.<sup>3</sup> The BSAI trawl groundfish average ex vessel revenues in 1995 and 1996 were \$2,062,983 for 181 vessels and \$1,731,770 for 192 vessels, respectively. With respect to the BSAI longline fleet, the corresponding total revenues were \$65,300,000 for 175 vessels and \$65,900,000 for 158 vessels and average ex vessel revenues were, \$373,142 for 175 vessels and \$417,088 for 158 vessels. *See Economic Status of the Groundfish Fisheries Off Alaska, 1996, Socioeconomic Task, November 21, 1997.* Note that the longline revenues apply to a fleet that is primarily comprised of small vessels that are dependent upon IFQs in the Gulf of Alaska ("GOA"), and large, shelterdecked, freezer longline vessels that are dependent on BSAI cod and turbot and BSAI and GOA IFQ fisheries. Very few, if any, of the small vessels, nor the great majority of the large vessels, would be suitable for fishing crab in the BSAI.<sup>4</sup> Vessel numbers by sector are not yet available for 1997.

In addition, the fisheries upon which the 120 identified vessels depend do not face the severe conservation and safety problems confronting the BSAI crab fisheries. The groundfish fisheries are not depressed. Fishing crab, not groundfish, in the BSAI is the

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<sup>3</sup> This decrease was not due to resource conditions, but was a consequence of the market.

<sup>4</sup> Thirteen additional, large vessels covered by Proposed Action 5 are prohibited from participating in the fisheries of the United States, until September 30, 1998, by an annual appropriations Act of Congress, section 616, P.L. 105-100, and would be permanently prohibited by enactment of S.1221, the American Fisheries Act or enactment of the Senate version of the Commerce/Justice/State fiscal year 1999 appropriations measure, S.2260 (section 614(a)(1)), pending before the 105th Congress. *See Senate Report 105-235.* The House companion appropriations measure, H.R. 4276 (section 616(a)(2)), would continue the ban on these vessels for fiscal year 1999, and the ban would, of course, be subject to renewal by future appropriations measures.

applied under these principles...FMPs that are in substantial compliance with the guidelines, the Magnuson-Stevens Act, and other applicable law must be approved. [Emphasis added.]<sup>7</sup>

50 C.F.R. 600.305(a)(3).

A. National Standard 4—Fairness and Equity

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

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

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

Courts have ruled, and the National Oceanic and Atmospheric Administration (“NOAA”) General Counsel has opined, concerning the requirement of National Standard 4 that, if allocations are necessary, they be fair and equitable to all United States fishermen.<sup>8</sup> 16 U.S.C. 1851(a)(4). In *National Fisheries Institute v. Mosbacher*, 732 F.

Supp. 210 (D.D.C. 1990), the Court stated:

Merely because these provisions [of FMP regulations] have a greater impact on one type of gear user or group of fishermen does not necessarily mean that they violate National Standard 4 [citing *Alaska Factory Trawler Ass’n v. Baldrige*, 831 F.2d 1456, 1460 (9<sup>th</sup> Cir. 1987)].

732 F. Supp. at 225.

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<sup>7</sup> However, as discussed in section III, below, there is broad administrative discretion to determine compliance.

<sup>8</sup> The Guidelines define an “allocation” or “assignment” of fishing privileges as a:

...direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative [sic] effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of Standard 4.



be to disqualify certain vessels primarily or fully engaged either in groundfish fisheries or in crab fisheries other than those of the BSAI.

The total number of vessels anticipated to be licensed under the original criteria of the LLP for the major BSAI crab fisheries is 365. An analysis of State of Alaska Commercial Fisheries Entry Commission ("CFEC") lists of permit holders and registered vessel owners shows that Proposed Action 5 would disqualify from BSAI crab fisheries approximately 120 pot, longline, and trawl vessels that are dependent upon other fisheries. Analysis, Table 81, p. 112.

Had they participated fully in the BSAI crab fisheries, these 120 vessels, based on the average vessel catch, could have harvested 47% of the total catch in 1995, 51% in 1996, and 47% in 1997. Based on the average ex vessel revenue, the 120 vessels could have displaced \$99,509,880 of the crab fleet's total revenue of \$209,800,000, in 1995. For the years 1996 and 1997, the 120 vessels could have displaced \$66,102,480 and \$62,894,880 of the fleet's total revenue of \$128,900,000 and \$134,700,000, respectively.

Revenues to individual vessels have dramatically declined in the BSAI crab fisheries over the past several years. The average vessel revenues in 1989 were \$1.6 million. In each of the years, 1996 and 1997, those revenues were slightly above \$600,000. Thus, in the period, 1995 to 1997, there was an approximately 50% decline in average vessel revenue. See Average Crab Vessel Revenue Adjusted for Inflation, attached. Were the identified 120 vessels to have participated in the BSAI crab fisheries in 1995, 1996, and 1997, the average vessel revenues in those fisheries would have been reduced to \$562,466, \$364,124, and \$357,294, that is, by 32%, 34%, and 32%, respectively.

Demonstrably, the mechanism for reduction of excess capacity that is based upon the distinction between vessels that depend on the BSAI crab fisheries, and those that do not, as determined by recent participation, is rational. The objectives of capacity reduction reasonably include the avoidance of economic harm to vessels that depend upon the affected fishery. Where those vessels are in marginal financial condition, measures to prevent the entry of latent capacity make the difference between economic survival and failure. To allow the failure of those vessels simply to make supplemental income available to vessels that depend upon other fisheries would be irrational.

It is true that the approval and implementation of Proposed Action 5 would result in some degree of potential economic loss to the group of fishermen who own and operate vessels that would no longer qualify for participation in the BSAI crab fisheries. The affected vessels would be those, regardless of gear type, that lack recent participation in, and therefore, do not depend upon, the BSAI crab fisheries.

Specifically, approval and implementation of Proposed Action 5 would eliminate the latent licenses of 1) approximately 31 trawl vessels that had participated as pot vessels in the BSAI crab fisheries during the early 1980s, and then moved to primary reliance on groundfish fisheries, and 2) approximately 13, large crab vessels (greater than 125 feet LOA) that left the BSAI crab fisheries to operate in other crab fisheries.

The holders of the latent BSAI crab fishing licenses are not, and have not been for at least the past several years, economically dependent on the BSAI crab fisheries. The elimination of these latent licenses would ensure that there would not be an influx of vessels that have, during past periods of low crab abundance, prosecuted U.S. groundfish fisheries or other crab fisheries. The proposed management action would thus protect

In addition, approval of Proposed Action 5 would facilitate the establishment of an industry-funded buyback of BSAI crab licenses, by reducing the number of latent licenses to be bought back for permanent retirement. It would be unfair to require the economically stressed BSAI crab fishing industry to use its scarce financial resources to pay for the purchase and permanent retirement of latent capacity from license holders who do not have demonstrated dependence on those fisheries. A buyback, which must be approved by a two-thirds vote of the affected vessel owners, is indispensable to the ultimate achievement of optimal sustainability in the BSAI crab fisheries.

The effect of approval and implementation of Proposed Action 5 would not be zero-sum. That is, the effect would not be simply to preserve for those primarily dependent upon the BSAI crab fisheries the potential revenues that would be denied the 120 vessels identified for disqualification by Proposed Action 5. The conservation and safety benefits to the depressed and dangerous BSAI crab fisheries would be substantial, and must be included in the determination of net benefit. Approval and implementation of Proposed Action 5 would maximize overall benefits.

#### B. National Standard 4—Other Requirements

##### 1. Discrimination

The proscribed discrimination is that based on state of residence. 50 C.F.R. 600.325(b). In particular, an FMP may not incorporate or rely on a state statute or regulation that discriminates against residents of another state.<sup>11</sup> This conforms with the Privileges and Immunities Clause of the United States Constitution, which provides, “The

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<sup>11</sup> 50 C.F.R. 600.325(b). This view was reflected in the U.S. Department of Justice Memorandum in Support of Defendant’s Opposition to Plaintiff’s Cross Motion for Summary Judgment at 13, *Alaska Factory Trawler Association v. Baldrige, supra*.

and important, as discussed below. The proscribed discrimination is not present in Proposed Action 5.

## 2. Conservation

A further National Standard 4 requirement for judging an allocation is that it be “reasonably calculated to promote conservation.” 16 U.S.C. 1851(a)(4)(B).

Conservation is assigned a very broad meaning. For example, the Guidelines state:

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

50 C.F.R. 600.325(c)(3)(ii).

In *National Fisheries Institute v. Mosbacher, supra*, at 439-440, the Court stated, “As the Court has repeatedly held today, the provisions challenged in this suit—and the ensuing advantages for recreational fishermen—are necessary and rationally related to the FMP’s legitimate objective of conserving billfish while also providing the greatest overall benefit to the nation.”

Excess harvesting capacity in the BSAI red king crab fisheries resulted in harvests for the 1996/1997 and 1997/1998 seasons that exceeded the GHGs. By definition, this presented a conservation problem. In view of the fragile condition of the red king crab resource, which has forced closed seasons in recent years, the conservation problem presented by exceeding GHGs must be regarded as serious. Because reduction of capacity through Proposed Action 5 would prevent an increase in, and even slow, the

By removing licenses from the BSAI crab fisheries, approval and implementation of Proposed Action 5 would reduce the number of participants. This would have the effect of increasing the share of fishing privileges enjoyed by those continuing to participate in the fisheries. However, the reduction of excess capacity, which must be effected to achieve conservation and other goals of the Act and the Crab FMP, can only be accomplished, as a practical matter, by reducing the number of participants. Even at that, the number of participants would exceed 200.

More to the point, approval and implementation of Proposed Action 5 would not disturb the ownership caps provided in the LLP. These caps have as their purpose the prevention of excessive shares.

#### 4. Achievement of the Optimum Yield and Other FMP Objectives

The Guidelines applicable to National Standard 4 provide that allocations should be rationally related to the achievement of the optimum yield or of other, legitimate FMP objectives. 50 C.F.R. 600.325(c)(3)(i)(A). Approval and implementation of Proposed Action 5 would reduce capacity in the affected fisheries, with the objective of improved assurance of achieving the optimum yield.

The Crab FMP provides:

The management goal is to maximize the overall long-term benefit to the nation of Bering Sea/Aleutian Island [sic] stocks of king and Tanner crabs by coordinated Federal and State management, consistent with responsible stewardship for conservation of the crab resources and their habitats.<sup>13</sup>

Management objectives are:

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<sup>13</sup> Summary of Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan (Revised 2/14/94) at 4.

### 5. Conclusion Regarding National Standard 4

A fishery management measure may treat different fishermen differently, if impermissible discrimination among residents of different states is avoided, and if the allocation scheme is fair and equitable, reasonably calculated to promote conservation, carried out in manner that no particular entity receives an excessive share of the fishing privileges, rationally related to achievement of the optimum yield, and serves the objectives of the relevant FMP and the National Standards.

Proposed Action 5 complies with these requirements. It would constitute a limited entry program allocating fishing privileges, but would not discriminate impermissibly between the residents of different states. By so allocating these privileges, fairness and equity would be preserved, conservation would be promoted, no particular entity would receive an excessive share, the optimum yield would be more readily achieved, and important objectives of the relevant FMPs and the National Standards would be served.

### C. Limited Entry Provisions of the Act

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

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

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

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

84 F.3d 348.

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

The history of the LLP process should be recalled, here. The Council issued the Environmental Assessment/Regulatory Impact Review for the LLP on September 18, 1994, and the Supplementary Analysis on May 27, 1997; the notice of availability of LLP FMP amendments was published on June 16, 1997.<sup>16</sup> The lists of problems and alternative solutions had been presented to the Council by its staff in January 1993. The NPFMC was notified of approval of the LLP FMP amendments on September 12, 1997.<sup>17</sup>

**A reasonable question is whether publication, planned for no later than January**

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<sup>16</sup> 62 F.R.32579, June 16, 1997.

<sup>17</sup> Letter from Steven Pennoyer, Administrator, Alaska Region, National Marine Fisheries Service, to Richard Lauber, Chairman, NPFMC, September 12, 1997.

does take into account historical fishing practices and the economics of the affected fisheries. The LLP endorsements, reflecting historical participation in the specified crab fisheries, would be preserved under Proposed Action 5. The economic conditions of the affected fisheries would be strengthened by removing excess capacity. The establishment of the later qualification periods would provide for participation by those vessels with demonstrated, primary dependence on the BSAI crab fisheries, and would eliminate vessels not primarily dependent on those fisheries. In particular, approval and implementation of Proposed Action 5 would take account of the fact that vessels that have remained in those fisheries consistently in the most recent years have foregone other fishing opportunities, and have been continuously and increasingly dependent on those fisheries. Proposed Action 5 takes into account other fishing opportunities by virtue of being premised upon the dependence of the disqualified vessels on fisheries other than those for BSAI crab.

The considerations set forth in section 303(b)(6)(E) relate to the cultural and social framework and to affected fishing communities. 16 U.S.C. 1853(b)(6)(E). These factors are addressed throughout the Analysis.

Section 303(b)(6)(F) requires the Council and the Secretary to take into account "any other relevant considerations". 16 U.S.C. 1853(b)(6)(F). These are also addressed in the Analysis and will be further treated in the course of the administrative procedure.

#### D. Other National Standards

##### 1. National Standard 1

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



and the achievement of the optimum yield, by preventing the entry of latent capacity into fisheries that already suffer from excessive capacity levels and, thus, are difficult to manage. The levels of capacity permitted by the LLP may readily result in harvests that exceed, or in some cases fall short of, the optimum yield, as reflected by the GHLS. With excessive fishing capacity on the grounds, and the resources in depressed condition, in-season management may be insufficiently responsive to prevent overharvests, and advance closure notices may be insufficiently reliable to prevent overharvests or, for that matter, underharvests. This may result in unsustainable fisheries, as evidenced by very short openings or total closures, and consequent economic hardships. With a prohibition on entry of latent capacity into BSAI crab fisheries, the pace of harvesting would be slowed and, therefore, overfishing would be more avoidable and the optimum yield would be more achievable.

In this context, it is particularly important to note that, "Sustainable fisheries is a key theme within the Magnuson-Stevens Act", as amended by the Sustainable Fisheries Act. 62 F.R. 41908, August 4, 1997. The Guidelines reflect a considerable emphasis on the adoption of conservation and management measures that will contribute to sustainability.<sup>22</sup> Proposed Action 5 is, thus, consistent with a key theme underlying a central provision of the controlling statute, National Standard 1, and of the related Guidelines.

## 2. National Standard 2<sup>23</sup>

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Analysis of OY for the affected fisheries is found in the Crab FMP and documents supporting the LLP and Proposed Action 5.

<sup>22</sup> See, for example, 50 C.F.R. 600.310 (National Standard 1—Optimum Yield).

<sup>23</sup> National Standard 2 was not amended by the Sustainable Fisheries Act.

noted above, new information on the BSAI crab fisheries confirms the need for a change in management measures, i.e., for approval and implementation of Proposed Action 5.

3. National Standard 3<sup>25</sup>

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

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

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

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

Approval and implementation of Proposed Action 5 would respect this requirement, by applying to the BSAI crab fisheries subject to the Crab FMP, with the exceptions of the crab fishery in Norton Sound and crab fisheries in State waters, generally, which present distinct management cases involving support for small coastal communities.

4. National Standard 5

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

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<sup>25</sup> This National Standard was not amended by the Sustainable Fisheries Act. The Guidelines elaborate upon this National Standard, but do not significantly illuminate it. 50 C.F.R. 600.320.

FMPs. [Footnote omitted.] Efficiency in terms of benefit to the nation as a whole is an amalgamation of numerous considerations, of which technical efficiency is only a component part. **To the degree, for instance, that management measures discourage overcapitalization, congestion, and excess effort targeted on too small a resource base, overall benefits are enhanced and general efficiency is achieved.** [Emphasis added.]

Brief for Federal Appellee at 41-42, *Alaska Factory Trawler Association v. Baldrige, supra*.

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

The Guidelines provide some explanation of this National Standard, in the specific context of allocations. Significantly, the Guidelines state, "An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency." 50 C.F.R. 600.330(b)(2)(i). "Given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable." 50 C.F.R. 600.330(b)(1).

The Guidelines also state:

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

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

It has been shown that Proposed Action 5 would have the effect of promoting, not only improved economic efficiency, but also, conservation and safety, by slowing the pace of the BSAI crab fisheries. The point concerning safety is especially important in light in National Standard 10, addressed below, and the recognition by Congress of the uniquely dangerous occupational conditions prevailing in those fisheries. These considerations, as applied to Proposed Action 5, ensure compliance with National Standard 5. To that conclusion should be added the observation that Proposed Action 5 would facilitate the proposed buyback for BSAI crab fisheries and, thus, further the policy objective of National Standard 5.

5. National Standard 6<sup>27</sup>

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

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

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

The Guidelines note that "...variations arise from biological, social, and economic occurrences, as well as from fishing practices." 50 C.F.R. 335(c)(1). The Guidelines also note that "[e]conomic uncertainty may involve [*inter alia*]... drifts toward overcapitalization and economic perturbations caused by changed fishing patterns." *Id.*

The Guidelines state that management measures should include some protection against uncertainties in the fisheries, and should, to the extent practicable, provide a suitable buffer in favor of conservation. 50 C.F.R. 600.335(b), (c)(2). The Guidelines

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

<sup>27</sup> This National Standard was not amended by the Sustainable Fisheries Act.

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

The burdens and other costs of management and fishing would be decreased by the preventing the influx of latent capacity into BSAI crab fisheries. The cost/benefit analysis set forth in the above discussion of National Standard 4 supports Proposed Action 5.

#### 7. National Standard 8<sup>29</sup>

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

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

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

“Fishing community” is defined by the Act, as follows:

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

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

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<sup>29</sup> See section 303(a)(9)(A) of the Act, which requires fishery impact statements, to include, *inter alia*, consideration of fishing communities. 16 U.S.C. 1853(a)(9)(A).

address social and economic considerations. Among other things, “[a] discussion of social and economic impacts should identify those alternatives that would minimize adverse impacts on these fishing communities within the constraints of conservation and management goals of the FMP, other national standards, and other applicable law.” 50 C.F.R. 600.345(c)(5). The requirements for analysis of management options are set forth with specificity. 50 C.F.R. 600.345(c).

The Guidelines further state:

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

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

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

Approval of Proposed Action 5 would not have either the purpose or the effect of allocating resources to specific communities, nor of providing preferential treatment based on residence in a fishing community. Any immediate, adverse impacts associated with fewer participants would be offset by improved economic conditions arising out of better conserved, safer, and financially sounder BSAI crab fisheries.

The last point merits elaboration. Approval and implementation of Proposed Action 5 would increase the value of the BSAI crab fisheries to communities, by leading to steadier employment, both at sea and on shore, through more stable and lengthier fishing seasons than would otherwise prevail. In addition, the avoidance of additional,

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participants, and of the dependent communities, would be safeguarded against the severe impact of latent capacity entering the fisheries.

It is noted that approval and implementation of Proposed Action 5 would leave undisturbed the LLP-related provisions for community development quotas (“CDQs”). As regards the consequential effects of Proposed Action 5 on CDQ communities, it is clear that prevention of an influx of latent capacity into the BSAI crab fisheries would, for the reasons set forth above, be of real benefit. It is also noted that amendment of the LLP by Proposed Action 3, to eliminate the possibility of new vessels entering those fisheries through CDQs, would serve to guard for those communities, and for all others affected, the benefits of measures, including Proposed Action 5, aimed at achieving sustainable levels of capacity.

#### 8. National Standard 9

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

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.<sup>31</sup>

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

Section 303(a)(11) provides:

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

\* \* \*

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<sup>31</sup> “Any fishery management plan...shall—include conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided....” 16 U.S.C. 1853(a)(11). This provision first appeared in P.L., 104-297, section 108(a)(11), as did the definitions quoted above (section 102(2),(9),(33)). A policy of the Act is “to assure that the national fishery conservation and management program...encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish....” 16 U.S.C. 1801(c)(3). See 16 U.S.C. 1853(b)(10).

shameful waste that is currently occurring in many fisheries.” *Id.* at S10820. Senator Gorton remarked, “...I join my colleagues in lauding those provisions that aim to reduce waste and bycatch in the fisheries...” *Id.* at S10814.

On the House Floor, Congressman Young, principal author of H.R. 39, and chairman of the committee of jurisdiction, stated, “The reduction of bycatch in our fisheries is one of the most crucial challenges facing fisheries managers today.” *Congressional Record*, September 18, 1995 at H9116. On passage of S. 39, he stated, “...the bill recognizes that bycatch is one of the most pressing problems facing the continuation of sustainable fisheries...” *Congressional Record*, September 27, 1996 at H11438.

The Guidelines address National Standard 9 in a detailed manner.

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

50 C.F.R. 600.350(d).

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

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<sup>32</sup> See S. Rpt. 104-276, May 23, 1996 and H. Rpt. 104-171, June 30, 1995.



and groundfish management scheme; the FMP amendment would be significant, but relatively narrow in scope. Compliance of Proposed Action 5 with bycatch-related provisions of the Act and the Guidelines should, therefore, be determined within the context of the overall management scheme of the Crab FMP and the relevant provisions of the FMP for BSAI groundfish. See Amendments 10, 12a, 21a, 37, 40, and 41 to the BSAI Groundfish FMP.

Overcapitalization is well recognized as a cause of bycatch waste. The NOAA Fisheries Strategic Plan, May 1997 ("Strategic Plan"), states, "...we will focus on reducing sources of waste such as overcapitalization." "In the next five years, NOAA Fisheries will...[m]inimize bycatch to the extent practicable, and minimize mortality of unavoidable bycatch...." Strategic Plan at 12. Michael Sissenwine, senior scientist of the NMFS, has noted overcapitalization as a cause of waste in the fisheries.<sup>33</sup> A Report of the U.N. Food and Agriculture Organization states:

There is growing global recognition that the world's fishing effort already exceeds what is necessary to harvest sustainable yields of marine fish. The single action that will provide the greatest improvement to the bycatch and discard problem in certain fisheries is the reduction of these effort levels. Without such control, other solutions to the bycatch and discard problem will be less effective, and real success in efforts to better manage the ocean's resources will be more difficult to attain.<sup>34</sup>

By preventing the influx of latent capacity and thus avoiding an increase in the pace of the BSAI crab fisheries, approval and implementation of Proposed Action 5 would result in better selectivity in fishing patterns and improved handling of juvenile and female crab. Increased soak time would contribute to fewer juvenile crab being

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<sup>33</sup> Sissenwine and Rosenberg, *Marine Fisheries at a Critical Juncture*, *Fisheries*, Vol. 18, No. 10 at Figure 11.

<sup>34</sup> Everett, *Fisheries Bycatch and Discards: A Report from FAO, Solving Bycatch: Considerations for Today and Tomorrow* at 280 (see Endnotes)

The Guidelines observe that fishing is an “inherently dangerous occupation” and that National Standard 10 “...directs Councils to reduce that risk in crafting their management measures, so long as they can meet the other national standards and the legal and practical requirements of conservation and management.” 50 C.F.R. 600.355(b)(1). It is noted that, “the safety of the fishing vessel and the protection from injury of persons aboard are considered the same as ‘safety of human life at sea’.” 50 C.F.R. 600.355(b)(3).

Particularly relevant is the following:

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

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

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

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

the Act are subject to extremely limited judicial review.<sup>38</sup> *Associated Fisheries of Maine, Inc. v. Daley*, 127 F.3d 104, 109-110 (1<sup>st</sup> Cir. 1997); *Alliance Against IFQs v. Brown*, 84 *supra*, at 349-350; *C&W Fish Co. v. Fox*, 931 F.2d 1556, 1562; *Washington Crab Producers, Inc. v. Mosbacher*, *supra*, at 1441; *Alaska Factory Trawlers Ass'n v. Baldridge*, *supra*, at 1460; *State of Maine v. Kreps*, 563 F.2d 1052, 1055 (1<sup>st</sup> Cir. 1977); *Southeastern Fisheries Ass'n, Inc. v. Mosbacher*, 773 F. Supp. 435, 439 (D.D.C. 1991); *National Fisheries Institute v. Mosbacher*, *supra*, at 223; *Associated Vessels Services, Inc. v. Verity*, 688 F. Supp. 13, 17 (D.D.C. 1988); *State of Louisiana v. Baldridge*, 538 F. Supp. 625, 628 (E.D. La. 1982); *Pacific Coast Fed'n v. Secretary of Commerce*, 494 F. Supp. 626, 628 (N.D. Cal. 1980).

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

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

84 F.3d at 345.

There is a necessary tension, perhaps inconsistency, among these [National Standards] objectives. The tension, for example, between fairness among all fishermen, preventing overfishing, promoting efficiency, and avoiding unnecessary duplication, necessarily requires that each goal be sacrificed to some extent in meeting the others.<sup>39</sup>

84 F.3d at 349.

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<sup>38</sup> Regulations, not fishery management plans and plan amendments, are subject to judicial review. *Southeastern Fisheries Ass'n, Inc. v. Mosbacher*, (D.D.C. 1991), 773 F. Supp. 435, 439.

127 F.3d 111.

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

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

732 F. Supp. 223.

Concerning interpretation and application of the Guidelines, a Legal Opinion of the General Counsel of the National Oceanic and Atmospheric Administration (“NOAA”) is instructive:

The national standard guidelines are intended as general statements of policy, and not binding rules. The guidelines leave the Councils wide discretion in preparing FMPs, and the Secretary has similar latitude in the application of the guidelines to individual cases....

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

In its Reply Brief in *Washington Trollers Association v. Kreps*, 466 F. Supp. 309

(W.D. Wash. 1979), the United States Department of Justice stated:

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

Department of Justice Reply Brief at 6-7.

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

the Court stated:

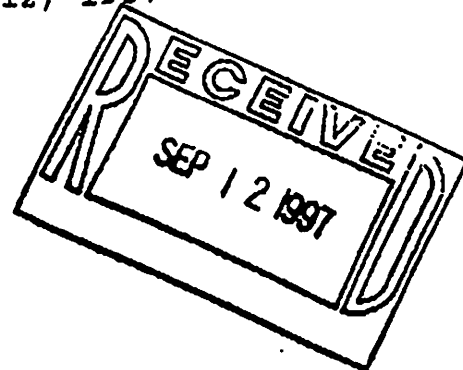
The Act called for establishment of ... advisory guidelines, based on the national standards set forth in 16 U.S.C. sec. 1851(a), to assist in the development of fishery management plans. 16 U.S.C. 1851(b). The Act states explicitly,



UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 National Marine Fisheries Service  
 P.O. Box 21668  
 Juneau, Alaska 99902-1668

September 12, 1997

(SEE ATTACHMENTS)



Richard B. Lauber, Chairman  
 North Pacific Fishery Management Council  
 605 West 4th Avenue, Suite 306  
 Anchorage, Alaska 99501-2252

Dear Rick,

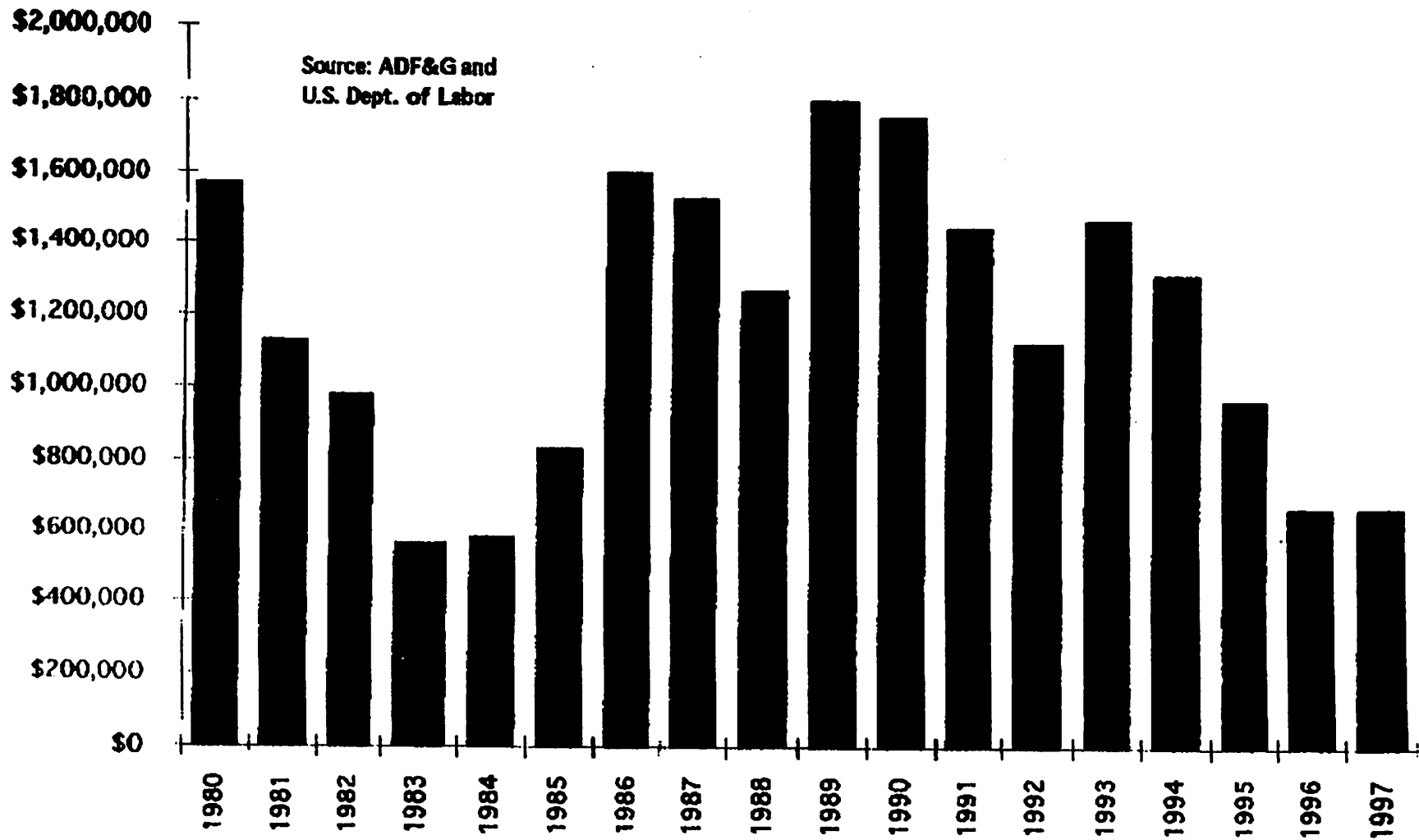
I have decided to approve Amendments 39, 41, and 5 dealing with the License Limitation Program (LLP) in the Bering Sea and Aleutian Islands and Gulf of Alaska, the Multispecies Community Development Quota (CDQ) Program in the Bering Sea and Aleutian Islands, and the trawl ban east of 140°W longitude (Southeast Outside District). This decision has been very difficult for the reasons I outline below. I feel it is my duty to provide the Council with further comment on our rationale for approval and our expectations and understandings on where the process is heading.

My involvement with the Council makes me appreciate the long history of Council deliberation on a comprehensive rationalization plan (CRP) for the North Pacific groundfish fisheries. Starting in 1983 with the halibut moratorium proposal, the Council has explored many programs to deal with overcapitalization, preemption, and the race for fish. Many alternatives have been assessed and some, such as the fixed gear halibut and sablefish Individual Fishing Quota (IFQ) Program, have been implemented. Massive amounts of public testimony, the workings of committees, and detailed reports on all aspects of the biological, social, economic status of the fisheries have been considered. Congress itself has commissioned a study of one approach to CRP, i.e., IFQs, and the Council's evaluation of its own IFQ program is still ongoing.

I understand the inadequacies of the current moratorium and the need to further control speculative entry by area and class of operation. Unfortunately, the Council's problem statement relates more to the long-term overall goals of the CRP than the management aspects that the LLP seems to address. Council deliberation on the amendments indicates clearly that the LLP is not an end in itself, but should be viewed as the next step toward CRP. The diversity of the fleet, industry, resource abundance and composition by area, and coastal communities, all dictate that no single, simple solution will answer all the problems. IFQs, Vessel Bycatch Accounts, license limits, buybacks, and allocations by gear sector or area may all play a



### Average Crab Vessel Revenue Adjusted for Inflation



October 8<sup>th</sup>, 1998

Mr. Rick Lauber, Chairman  
Dr. Clarence Pautzke, Executive Director  
North Pacific Fishery Management Council  
Post Office Box 103136  
Anchorage, Alaska 99510

Re: Crab LLP

Dear Rick,

The Muir Milach has fished crab in the 80's, it fished in 92, 93, 94, 95, 97, and will be fishing in the 98 king crab season. We have a large investment in pots and equipment and have qualified for LLP endorsements in a variety of crab fisheries. Crab is not the majority of our income, but it is an important part of our diversified operation. Crab represented 32% of our income in 94.

We support retiring truly latent licenses in the crab and groundfish fisheries. We do not support taking away licenses from diversified combo vessels for failure to utilize all licenses and/or endorsements every year.

According to the EA/RIR there are of the *410 vessels* which have been fishing crab since the Council passed the license program in 1995. *117 vessels lack LLP endorsements. These vessels are out* when NMFS implements the LLP whether or not they fished in 1996 or 1997.

There are *72 vessels that qualify for a LLP crab license who have not fished* since the council passed LLP in 1995. Had these latent licenses been used, at least *482 vessels* could have fished. They will lose their licenses if the Council goes no further than adopting the AP recommendation of one landing in the last four years. This equates to a reduction of 189 permits or 39%.

If the Council adopts a 1997 requirement there are *an additional 35 vessels which lose their licenses.*

The combination of simply implementing LLP, together with a 1997 delivery requirement, reduces the fleet that has fished, or has been eligible to fish since 1995 from 482 to 258, a 46% reduction. *That is a major de-capitalization of the crab fishery without compensation.*

A string of crab pots costs at least \$100,000. The specialized equipment (crab-block, crane, launcher, coiler, bait chopper, etc.) which is only useable in a pot fishery, costs another couple hundred thousand dollars.

Qualifying for an LLP crab license and endorsement required multiple landings in multiple years by species. This is far more stringent than the criteria for receiving a groundfish LLP permit, which could have been obtained with a fishing pole and a nickel's worth of groundfish.

### Ranking the Alternatives:

1996 is the only year in the last 7 years we didn't fish crab. There are several alternatives that are acceptable to us. In fact any alternative that doesn't require fishing in 1996 or the opilio fishery in 1998 is acceptable.

**Alt. 10** - (95, 96, 97, or 98) -the AP recommendation - is *unnecessarily liberal*.

**Alt. 9 - (96, 97, or 98) is preferred**, and equates to operating in one of two years, since 98 only runs through Feb. 7<sup>th</sup>.

**Alt. 4** - (96 and 97) is *unacceptable*, it takes the permit from a vessel which may only have missed one of the last four years in the crab fishery.

**Alt. 11** - (Any two of 95, 96, 97, or 98) is *acceptable*.

**Alt. 23** - (96, or 97) is *acceptable*.

**Alt. 25** - (97, or 98) is *acceptable*.

**Alt. 13** - (97 only) is *liveable* for our vessel, but is unfair to someone who may have fish every year except 97.

**Alt. 40** - (97 and [95 or 96]) is *liveable* for our vessel, but is unfair to someone who may have fish every year except 97.

**Alt. 48** - (97 and [95, 96, or 98]) is *liveable* for our vessel, but is unfair to someone who may have fish every year except 97.

**Alt. '62'** - (97 or [Any two of 95, 96, or 98]) is *acceptable*.

### Crab, Co-ops, and S1221

If we end up fishing pollock in a cooperative mode as the result of passage of S1221, we believe that the opilio fishery and the St. Matthew's and Pribilof king crab fisheries deserve protection from effort shifts. This is legitimate because without a co-op a vessel would not be able to participate in these crab fisheries and open access pollock. We don't believe the same logic applies to Bristol Bay or Adak red king crab or bairdi fisheries.

Thank you.

Sincerely,

dave fraser  
Captain, FV Muir Milach



Leonard Herzog C-1

**2.2.3.1 Vessels With Landings in the Crab Fisheries, 1995-1998**

Table 16 shows numbers of participating vessels from January 1, 1995, through February 1998 by vessel class. Participation data for 1995-1997 are taken from fish tickets supplied by CFEC and ADF&G. In-season catch monitoring records supplied by ADF&G were used for 1998. Recent CP participation data came from ADF&G shellfish observer reports. In the table, the "CP" and "CV" columns indicate the operations of given vessel in the year, and do not indicate whether the vessels will receive that designation. Participation declined from 349 vessels in 1995 to 282 in 1997. Through February 7, 1998, 219 vessels had participated. The lower number in 1998 probably reflects the fact that only a few weeks of the fishing year had passed. Throughout the recent period a total of 410 unique vessels had participated; 19 vessels as CPs, and 391 as CVs. The data indicate that number of vessels acting as catcher processors fell from 17 in 1995 to 11 in 1997. A total of 19 different vessels have acted as catcher processors over the recent participation period. The largest decline in any given class appears in the Seine Combination CV class, where the number of participants dropped from 70 in 1995 to 7 in 1997. The other vessel classes varied within narrower range.

**Table 16: Participation in BSA Crab Fisheries by Vessel Class, 1995-1998**

Vessel Class	1995			1996			1997			1998			1995-1998		
	CPs	CVs	All	CPs	CVs	All	CPs	CVs	All	CPs	CVs	All	CPs	CVs	All
Factory Trawler	2	6	8	1	3	4	1	4	5	1	1	2	2	6	33
Fixed-gear CPs	15	15	30	13	16	29	10	16	26	8	15	23	17	16	33
Pot CVs 125'+	0	47	47	0	47	47	0	46	46	0	46	46	0	52	52
Pot CVs 60'-124'	0	143	143	0	138	138	0	137	137	0	119	119	0	148	148
Seine Combination CVs	0	70	70	0	49	49	0	7	7	0	6	6	0	96	96
Trawl CVs 125'+	0	13	13	0	8	8	0	16	16	0	7	7	0	17	17
Trawl CVs 60'-124'	0	38	38	0	25	25	0	45	45	0	16	16	0	56	56
<b>Grand Total</b>	<b>17</b>	<b>332</b>	<b>349</b>	<b>14</b>	<b>286</b>	<b>300</b>	<b>11</b>	<b>271</b>	<b>282</b>	<b>9</b>	<b>210</b>	<b>219</b>	<b>19</b>	<b>391</b>	<b>410</b>

Note: Information presented in this table does not include participation in the Norton Sound king crab fisheries.

Table 17 shows recent participation in the crab fisheries by vessel class and indicates whether the vessel's owner is currently a resident of Alaska. The number of Alaskan residents participating in the crab fisheries declined throughout the period, while the number of participating residents of other states fell in 1996 and then rose in 1997. Nearly all of the decline in Alaskan residents is accounted for by the decline in the number of participating Seine Combination CVs, which dropped from 63 in 1995 to 7 in 1997. The greatest variation for residents of other states appears in the Trawl CV 60' -124' vessel class.

**Table 17: Participation in BSA Crab Fisheries by Vessel Class by Owners' State, 1995-1998**

Vessel Class	1995			1996			1997			1998			1995-1998		
	AK	OT	All	AK	OT	All	AK	OT	All	AK	OT	All	AK	OT	All
Factory Trawler	(1)	7	8	(1)	3	4	(1)	4	5	1	1	2	1	7	33
Fixed-gear CPs	(5)	25	30	(5)	23	28	(5)	21	26	5	18	23	5	28	33
Pot CVs 125'+	(9)	38	47	(9)	38	47	(9)	37	46	9	37	46	9	43	52
Pot CVs 60'-124'	(57)	86	143	(57)	81	138	(57)	80	137	44	75	119	61	87	148
Seine Combination CVs	63	7	70	47	2	49	7	0	7	1	5	6	83	13	96
Trawl CVs 125'+	0	13	13	0	8	8	1	15	16	1	6	7	1	16	17
Trawl CVs 60'-124'	(9)	29	38	(8)	17	25	(10)	35	45	5	11	16	13	43	56
<b>Grand Total</b>	<b>144</b>	<b>205</b>	<b>349</b>	<b>127</b>	<b>172</b>	<b>299</b>	<b>90</b>	<b>192</b>	<b>282</b>	<b>66</b>	<b>153</b>	<b>219</b>	<b>173</b>	<b>237</b>	<b>410</b>

Notes:  
 1. "AK" indicates that participating vessels are currently owned by an Alaskan residents.  
 2. "OT" indicates that participating vessels are currently owned by residents from other states.  
 3. The information provided in this table does not include participation in the Norton Sound king crab fisheries.

### 7.3 Comparison of Alternatives

Table 80 provides a summary of the number of vessels projected to qualify under each alternative. The table only shows qualifiers (Q) and non-qualifiers (NQ) that would qualify under the current Crab LLP. Thus the sum of the Q + NQ will be the same under every alternative. The columns showing the percentage decrease were calculated using non-qualifiers in the numerator and the sum of qualifiers and non-qualifiers in the denominator.

The biggest decreases in the number of qualifiers occurs whenever participation in 1998 is required (Alternatives 5, 7, and 8). This is an expected outcome because the *opilio* fishery is the only major fishery that was open on or before February 7, 1998. Thus any alternative that requires 1998 participation will favor participants in the *opilio* fishery. Requiring 1998 participation will also tend to favor larger vessels over smaller vessels that are more likely to be at risk in the winter conditions of the Bering Sea.

Of the remaining alternatives, the two most restrictive would require participation in both 1996 and 1997. Alternative 6, which requires participation in all three years between 1995 and 1997, would eliminate 5 more vessels than Alternative 4, which requires participation only in 1996 and 1997. Requiring participation in any one year between 1995 and 1998 (Alternative 10) is the least restrictive, reducing the numbers in the fleet by only 20 percent. Alternative 9, which requires participation once between 1996 and 1998, and Alternative 11, requiring participation in any two years, are also relatively lenient.

Overall, the recent participation criteria tend to eliminate proportionally more Alaskan residents than residents of other states. The proportional difference, measured by taking the difference between the percentage decrease in Alaskans and the percentage decrease from other states, is least with Alternative 5 and 6, both of which require participation in 1996 and 1997. The proportionate differences are greatest in those alternatives that are the most lenient in terms of recent participation (Alternatives 9 and 10).

**Table 80: Summary of Qualifying Crab Vessels under the Alternatives**

Alternative	Alaskan owners			Owners from Other states			All Vessels		
	Q	NQ	Percent decrease	Q	NQ	Percent decrease	Q	NQ	Percent decrease
Alternative 2: 96	75	50	40	164	76	32%	239	126	35
Alternative 3: 95 & 96	73	52	42	161	79	33%	234	131	36
Alternative 4: 96 & 97	72	53	42	154	86	36%	226	139	38
Alternative 5: 97 & 98	57	68	54	141	99	41%	198	167	46
Alternative 6: 95 - 97	70	55	44	151	89	37%	221	144	39
Alternative 7: 96 - 98	57	68	54	138	102	43%	195	170	47
Alternative 8: 95 - 98	57	68	54	136	104	43%	193	172	47
Alternative 9: Once in 96 - 98	78	47	38	194	46	19%	272	93	25
Alternative 10: Once in 95 - 98	85	40	32	208	32	13%	293	72	20
Alternative 11: Twice in 95 - 98	77	48	38	180	60	25%	257	108	30

Notes:  
 1. "Q" denotes the numbers of vessels that are projected to qualify under the alternative.  
 2. "NQ" denotes the numbers of vessels that are projected to be disqualified under the alternative.  
 3. "All" denotes the numbers of vessels that were projected to qualify under the status quo.

The number of projected qualifiers as shown in Table 80 will be affected by the implementation issues discussed in subsection 7.1. The number of persons who would be issued licenses is expected to be reduced if the Council allows combinations of fishing histories to meet the recent participation criteria and at the same time makes such combinations non-severable. The number of persons who are projected to receive licenses will increase with exemptions to the recent participation criteria. Paradoxically, the number of vessels that would benefit from the exemptions increases as the participation criteria become

Leonard Herzog

Wednesday Oct 7, 1998

C-1

TITLE \_\_\_ - FISHERIES {PRIVATE }

SUBTITLE \_\_\_ - FISHERY ENDORSEMENTS

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SEC. \_\_01. SHORT TITLE.--This title may be cited as the "American Fisheries Act".

SEC. \_\_02. STANDARD FOR FISHERY ENDORSEMENTS.

(a) STANDARD.--Section 12102(c) of title 46, United States Code, is amended to read as follows--

“(c)(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

“(2) The Secretary shall apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is owned and controlled by citizens of the United States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms ‘control’ or ‘controlled’—

“(A) shall include--

“(i) the right to direct the business of the entity which owns the vessel;

1 processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by  
2 another individual or entity shall be considered to be the same entity as the other individual or  
3 entity for the purposes of this subparagraph.

4 (B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act  
5 (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the  
6 Secretary conservation and management measures to prevent any particular individual or entity  
7 from harvesting or processing an excessive share of crab or of groundfish in fisheries in the  
8 Bering Sea and Aleutian Islands Management Area.

9 (C) The catcher vessels eligible under section \_\_08(c) are hereby  
10 prohibited from participating in a directed fishery for any species of crab in the Bering Sea and  
11 Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed  
12 fishery for that species of crab in such Area during 1997 and is eligible to harvest such crab in  
13 such directed fishery under the license limitation program recommended by the North Pacific  
14 Council and approved by the Secretary. The North Pacific Council is directed to recommend  
15 measures for approval by the Secretary to eliminate latent licenses under such program or other  
16 applicable programs, and nothing in this subparagraph shall preclude the Council from  
17 recommending measures more restrictive than under this paragraph or that allow the catcher  
18 vessels affected by this paragraph to participate in such fisheries.

19 (3) FISHERIES OTHER THAN NORTH PACIFIC.--By not later than July 1,  
20 1999, the Pacific Fishery Management Council established under section 302(a)(1)(F) of the

1 (D)(P)(c) CATCHER VESSELS TO MOTHERSHIPS.—Effective January 1, 2000, only the  
following catcher vessels shall be eligible to harvest the directed fishing allowance within the  
3 allocation under section \_\_06(b)(3) pursuant to a federal fishing permit:

4 (1) ALEUTIAN CHALLENGER (United States official number 603820);

5 (2) AL YESKA (United States official number 560237);

6 (3) AMBER DAWN (United States official number 529425);

7 (4) AMERICAN BEAUTY (United States official number 613847);

8 (5) CALIFORNIA HORIZON (United States official number 590758);

9 (6) MAR-GUN (United States official number 525608);

10 (7) MARGARET LYN (United States official number 615563);

11 (8) MARK I (United States official number 509552);

12 (9) MISTY DAWN (United States official number 926647);

13 (10) NORDIC FURY (United States official number 542651);

14 (11) OCEAN LEADER (United States official number 561518);

15 (12) OCEANIC (United States official number 602279);

16 (13) PACIFIC ALLIANCE (United States official number 612084);

17 (14) PACIFIC CHALLENGER (United States official number 518937);

18 (15) PACIFIC FURY (United States official number 561934);

19 (16) PAPADO II (United States official number 536161);

20 (17) TRAVELER (United States official number 929356);

**Manager's Amendment to S. 1221, the American Fisheries Act  
October 3, 1998 -- 12:00 noon**

Viz:

Strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.--This Act may be cited as the "American Fisheries Act".

(b) TABLE OF CONTENTS.--The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—STANDARD OF OWNERSHIP**

Sec. 101. Standard of ownership.

Sec. 102. Enforcement of standard.

Sec. 103. Repeal of ownership savings clause.

**TITLE II-BERING SEA/ALEUTIAN ISLANDS POLLOCK FISHERY**

Sec. 201. Definitions.

Sec. 202. Allocations.

Sec. 203. Buyout.

Sec. 204. Lists of eligible vessels.

Sec. 205. List of ineligible vessels.

Sec. 206. Fishery cooperative limitations.

Sec. 207. Protections for other fisheries; conservation measures.

Sec. 208. Restriction on federal loans.

Sec. 209. Duration.

**TITLE I — STANDARD OF OWNERSHIP**

**SEC. 101. STANDARD FOR FISHERY ENDORSEMENTS.**

(a) STANDARD.--Section 12102(c) of title 46, United States Code, is amended to read as follows--

“(c)(1) A vessel owned by an individual who is a citizen of the United States is eligible for a fishery endorsement, except that such vessel may not be controlled by an individual who is not a citizen of the United States or by an entity that is not eligible to own a vessel with a fishery endorsement under this subsection.

“(2) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a

the North Pacific Council.

2 This paragraph shall take effect on January 1, 1999 for catcher/processors eligible under  
3 section 204(e) that will harvest western Alaska community development quota pollock in  
4 1999, and shall take effect on January 1, 2000 for all other catcher/processors eligible  
5 under section 204(e).

6 (c) CATCHER VESSEL RESTRICTIONS.

7 (1) BERING SEA CRAB.—The catcher vessels eligible under subsections (a), (b),  
8 or (c) of section 204 are hereby prohibited from participating in a directed fishery for any  
9 species of crab in the Bering Sea and Aleutian Islands Management Area unless the  
10 catcher vessel harvested crab in the directed fishery for that species of crab in such Area  
11 during 1997 and is eligible to harvest such crab in such directed fishery under the license  
12 limitation program recommended by the North Pacific Council and approved by the  
13 Secretary. Nothing in the preceding sentence or this Act shall be construed to preclude  
14 the North Pacific Council from recommending and the Secretary from approving further  
15 measures to prohibit catcher vessels eligible under subsections (a), (b), or (c) of section  
16 204 from participating in Bering Sea and Aleutian Islands Management Area directed  
17 fisheries for crab.

18 (2) BERING SEA COD.—The catcher vessels eligible under subsections (a), (b),  
19 and (c) of section 204 are hereby prohibited from exceeding the percentage of the  
20 directed harvest available to catcher vessels in the Bering Sea and Aleutian Islands cod  
21 fishery from January 1 until March 1 that is equivalent to the amount of the directed  
22 harvest in such fishery by such catcher vessels from January 1 until March 1 of 1995,  
23 1996, and 1997 relative to the total amount of the directed harvest by all catcher vessels  
24 in such fishery from January 1 until March 1 of 1995, 1996, and 1997;

25 (3) BERING SEA AND GULF OF ALASKA GROUND FISH FIXED GEAR.

(A) The catcher vessels eligible under subsections (a), (b), and (c) of  
section 204 that have used fixed gear in directed fisheries (other than the directed

**Black Sea Fisheries Inc.**

Stoian and Angelique Iankov  
740 Old Gardiner Rd.  
Gardiner, WA. 98382  
Ph. (360) -797-7131  
Fax (360) -797-72

January 27, 1998

Mr. Richard Lauber  
Chairman  
North Pacific Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK. 99501-2252

Re: LLP potential amendments (Agenda Item c-6b)

Dear Mr. Lauber,

We understand that the Council will be discussing changing some of the components of the license limitation program at the upcoming Council meeting. One of those potential changes is increasing the number of landings required to have an endorsement to fish in the Western Gulf of Alaska. We believe making such a change would be unfair to those who have already made investments based on the Council's existing rules in the license limitation program.

My husband has fished for twenty-two years. He started out as a processor on a factory boat, then a deckhand on a small trawlers and shrimpers and eventually became captain. He has fished groundfish from California up to the Pribilofs and beyond, spending thousands of days offshore in the North Pacific. Everything he has ever done and we have done together has been in preparation for owning our own vessel.

In 1997, we finally were able to buy a vessel of our own and my husband is now in the shipyard making modifications. Before we purchased this vessel, we researched the license limitation endorsement qualifying periods thoroughly. We wanted to make sure that our vessel qualified to fish in all the areas where my husband traditionally makes his living. We found such a permit and purchased it. So our boat has a WGOA endorsement but it will lose that endorsement if the Council increases the landing requirements for that area.

This has been a lifelong dream of ours and we have saved for years to be able to attain it. We believe that changing the rules in the manner under discussion by the council would be negating the value of our permit. We purchased this permit in good faith based on the council's final actions on license limitation. If any expansion of qualifying landings occur, the Council must structure them so investments such as ours are not taken from us.

Thank you for your attention to this matter.

Sincerely,

Angelique and Stoian Iankov



**OPTIONS PAPER  
ON VESSEL/LICENSE LINKAGE UNDER  
THE LICENSE LIMITATION PROGRAM**

Prepared by  
Staff  
NMFS, Alaska Region  
October 1, 1998

**I. BACKGROUND**

One of the primary reasons for developing the License Limitation Program (LLP) was reducing excess effort and overcapacity in the groundfish fisheries in the exclusive economic zone (EEZ) off Alaska and in the commercial king and Tanner crab fisheries in the Bering Sea and Aleutian Islands. In fact, the first issue identified in the problem statement describing the need for and purpose of a comprehensive rationalization plan for the aforementioned fisheries, of which LLP is a part, is that the harvesting capacity of the fleet in the EEZ off Alaska is in excess of that required to harvest the resource. This concern influenced many of the choices made by the Council when it recommended the LLP to the Secretary of Commerce.

One of the Council's choices concerned the vessel/license linkage. The Environmental Assessment/Regulatory Impact Review for the LLP (September 9, 1994) presented the Council with two options. The first option linked a license directly to the vessel, i.e., a vessel must be transferred with the license. This option created a "closed class" of vessels, leading to the eventual retirement of the entire fleet, except for exempt vessels, and a more restrictive license program. The second option separated the license from the vessel, i.e., a license may be applied to a vessel other than the vessel used for license qualification. This option provided more flexibility to a license holder, and because a license could be used on only one vessel at a time, it placed an upper limit on the number of vessels that could be used to participate in the affected fisheries at any one time. A license could be "transferred" to another vessel as long as the license holder complied with vessel length and processing designation requirements.

The March 9, 1995, Supplemental Analysis focused primarily on the 20% upgrade and replacement provision; however, the analysis did reiterate that a license could be transferred among vessels as long as a license holder did not violate the vessel designation (catcher or catcher/processor) or vessel length category. By the June 2, 1995 Supplemental Analysis, the Council's preference to allow a license to be used on a vessel other than the vessel used for license qualification was clear.

At its June 1995 meeting in Dutch Harbor, the Council made its final recommendations for the LLP. Transcripts from that meeting indicate that the Council adopted Option 2--A license may be transferred without a vessel. The motion further indicated that this meant that a license could be used

on a vessel other than the vessel used for license qualification, subject to the license designations and the 20% upgrade requirements.

Further discussion on Option 2 indicates that the Council was concerned that if a license holder was allowed to lease a license, such leasing could contribute to the overcapacity problem. The example provided was of a license being leased from a person who had participated in a trawl fishery to a person planning to participate in a fixed gear fishery after the trawl fishery had closed. Based on that discussion, the Council moved, and later adopted, a provision that prohibited the leasing of a license. NMFS indicated during the Council's discussion on that motion that although the total prevention of leasing would be difficult, actions could be taken to reduce the incidence of leasing.

The January 16, 1997, Supplemental Analysis discussed the vessel/license linkage in the context of allowing "downgrading." Allowing a license holder to "downgrade" meant that a license could be used to deploy a vessel smaller than the vessel used for license qualification, even if the smaller vessel was in a different vessel class. The Council indicated that it did not want to discourage a license holder from using a smaller vessel than the one authorized by the license. Allowing "downgrading" was considered another method of potentially reducing effort and capacity.

The proposed rule implementing the LLP (62 FR 43865, August 15, 1997) did not specifically state that a vessel name would be designated on the license. However, the regulatory text of the proposed rule did state that the "name of the vessel" had to be included in the application for a groundfish or crab species license. This requested information implied that the name of the vessel had some significance to the future use of a license. The merits of including the name of a specific vessel on a license was considered by NMFS during discussions about LLP implementation. NMFS weighed the benefits of designating the name of a specific vessel on a license, i.e., the potential reduction in effort and capacity due to the time delay in obtaining a transfer of a license and the readily accessible cross-check the name of a specific vessel on a license would provide for enforcement purposes, with the detriments, i.e., administrative burden to the agency of transferring a license between vessels when no change in a license holder was requested and the increased burden on license holders of transferring a license when moving among vessels. NMFS decided that the vessel designation (catcher vessel or catcher/processor vessel) and the vessel length category (Category "A," Category "B," or Category "C") assigned on each license would be sufficient safeguards to license movement between vessels. For example, an LLP license could be used only on a vessel that did not exceed the maximum length overall designated on the license and that complied with the vessel designation (catcher vessel or catcher/processor vessel).

The decision by NMFS not to include the name of a specific vessel on a license was presented as a change in the final rule (Letter to Council, June 4, 1998), even though the proposed rule did not specifically state that the name of a specific vessel would be designated on a license. This decision was presented as a change to dispel any confusion on whether a specific vessel name would or would not be designated on a license.

At the June 1998 Council meeting in Dutch Harbor, both the Council and its Advisory Panel expressed concern over the lack of a specific vessel name designated on a license. NMFS was requested to provide an options paper exploring the issues surrounding this requirement. Two aspects that were specifically requested to be addressed were (1) frequency of transfers and (2) waiting period between transfers.

## II. GENERAL ISSUES

The only discernible benefits of requiring the transfer of a licence for a license holder to move among vessels that otherwise comply with the vessel designation and the vessel category on the license would be (1) that the time delay of the transfer process might in some cases reduce the productive use time of the license, i.e., the license could not be used to deploy a vessel while it is being transferred, and (2) that the paperwork requirements of the transfer may discourage some license holders from moving between vessels. These benefits would not prevent, but merely delay, the movement of licenses among vessels.

One of the concerns expressed by the Council is that not requiring a vessel name on the license would facilitate the leasing of LLP licenses. The LLP regulations specifically prohibit a person from leasing an LLP license; therefore, that type of transaction is already proscribed. Notwithstanding the prohibition on leasing, NMFS does anticipate that transactions will occur that circumvent that prohibition. However, requiring the name of a vessel on an LLP license will not stop a person from circumventing the leasing prohibition. A lease is a contract granting the use of something, e.g., real property, a vehicle, or a license, for a specified period in exchange for rent. This can occur whether or not a specific vessel name is on a license. However, requiring a specific vessel name on a license may affect the time it would take to effectuate an "illegal" lease.

For example, license holder "A" decides to lease an LLP license to "B." If a vessel name is not required on a license, that transaction, as well as fishing, could occur immediately. However, if the vessel name is required, fishing would have to wait until after the transfer is complete. In both cases, an "illegal" lease has occurred; however, it took longer to effectuate the lease when the vessel name is required on the license. On a positive note, requiring a transfer because of a vessel name change would create a paper trail for checking later transactions. For example, if it was noticed that "A" transferred to "B," "B" transferred back to "A," and then "A" transferred to "C," such a transaction would be considered suspect. However, only the most unwitting of miscreants would alert NMFS that a lease might have occurred through this type of transaction. Most persons would arrange the transaction as follows: "A" transfers to "B," and then when the lease term expires, "B" transfers to "C," the new lessee. This type of transaction would be almost impossible to distinguish from a legitimate transfer.

Furthermore, the above scenario occurs only when a vessel change is necessary. Leases can occur without a vessel change. Such transactions often are called "hiring a skipper." Most of these type of transactions are legitimate, i.e., the hired skipper is an employee and not a lessee. However, experience gained through the administration of the IFQ Program only heightens the awareness of

NMFS that any program that allows for absentee ownership provides fertile ground for leasing arrangements.

Finally, the LLP does not require the license holder of an appropriate license to be aboard the vessel while it is deployed in a fishery, nor does the LLP require ownership of a vessel before it is deployed in a fishery by a license holder of an appropriate license. All that is required is that the appropriate license is on board a vessel that is deployed in a fishery. Requiring the license holder to be aboard a vessel most likely would not work for the LLP since a significant portion of license holders will not be individuals. Similarly, requiring vessel ownership does not seem in concert with the LLP design. In fact, the Council specifically provided that a legitimately obtained appropriate fishing history would provide eligibility in lieu of vessel ownership.

### **III. FREQUENCY OF TRANSFERS AND WAITING PERIOD BETWEEN TRANSFERS**

Two methods that have the potential of reducing prohibited leasing are (1) limiting the frequency of transfers, or alternatively (2) establishing a mandatory waiting period between transfers. These methods also would address the issue of intraseason movement of a license among vessels, assuming, of course, that a vessel had to be named on the license. For example, a limit of one transfer per season or a waiting period of at least six months between transfers would reduce the potential for intraseason movement of licenses among vessels. Adding either of these methods will require a change to the existing LLP regulations. Time is of the essence if this change is to be included in the program before fishing commences under the LLP.

It is important to note that placing limits on transfers also can have deleterious effects. One potential problem would be in the case of a vessel that no longer can be used for fishing, i.e., sunk or otherwise unusable. If a license holder was prevented from transferring the license because of frequency limitations or waiting periods, then that license holder would experience a loss in value of that license.

A possible solution to this potential loss in value is to have a special mechanism to allow transfers that would exceed the established limits for emergency purposes only. This mechanism, however, would have administrative costs. Requests for emergency transfers would have to be evaluated to ensure that they were not frivolous; otherwise, the limitations on transfers would have a negligible impact on decreasing intraseason movement of licenses among vessels.

#### IV. CONCLUSION

Requiring that a specific vessel be named on a license will not prevent the leasing of licenses. It would, however, increase the paperwork requirements of NMFS and the participants in fisheries managed under the LLP. Requiring that a specific vessel be named on a license would reduce the intraseason movement of licenses among vessels. However, if the intent of the Council is to reduce that activity, more effective methods of realizing that intent would be (1) limiting the frequency of transfers or (2) establishing a waiting period between transfers. Either of these methods would directly address the issue of intraseason movement of licenses. Requiring that a specific vessel be named on a license for that purpose only provides an administrative obstacle, not a prohibition.

Determining the limit on the frequency of, or the length of the waiting period for, license transfers would depend on how restrictive the Council intends to be on intraseason movement of licenses. Also, consideration must be given to whether a provision for emergency transfers should be included. As mentioned earlier, time is of the essence if these changes are to be made before fishing commences under the LLP.

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 970703166-8209-04; I.D. 060997A3]

RIN 0648-AH65

## Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

**SUMMARY:** NMFS issues a final rule implementing part of Amendment 39 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendment 41 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI. These amendments, submitted by the North Pacific Fishery Management Council (Council), establish the License Limitation Program (LLP). The LLP limits the number, size, and specific operation of vessels that may be deployed in the groundfish fisheries in the exclusive economic zone (EEZ) off Alaska, except for demersal shelf rockfish east of 140° W. long, and sablefish managed under the Individual Fishing Quota (IFQ) Program. The LLP also limits the number, size, and specific operation of vessels that may be deployed in the crab fisheries managed pursuant to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI.

**DATES:** Effective January 1, 2000, except for definitions added to § 679.2 and paragraphs (i)(3), (i)(4), (i)(5), (i)(6), (i)(8)(iii), and (i)(8)(iv) added to § 679.4, which are effective January 1, 1999.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for this action may be obtained from the Division of Sustainable Fisheries, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802. Attention: Lori J. Gravel.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the GOA and the BSAI in the EEZ pursuant to the FMPs for groundfish in

the respective management areas. With Federal oversight, the State of Alaska manages the commercial king crab and Tanner crab fisheries in the BSAI pursuant to the FMPs for those fisheries, which the Council developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

#### License Limitation Program—Background Information

The LLP is the first stage in fulfilling the Council's commitment to develop a comprehensive and rational management program for the fisheries in and off Alaska. The Council first considered the comprehensive rationalization plan (CRP) at its meeting in November 1992. Experts on limited-entry programs were invited to testify at that meeting, and the Council reviewed initial CRP proposals from the fishing industry. In December 1992, the Council approved a problem statement describing the need for and purpose of the CRP.

The problem statement articulated the Council's concern that the domestic harvesting fleet had expanded beyond the size necessary to harvest efficiently the optimum yield (OY) of the fisheries within the EEZ off Alaska. Further, it confirmed the Council's commitment to the long-term health and productivity of the fisheries and other living marine resources in the North Pacific and Bering Sea ecosystems. To fulfill that commitment, the Council intended to design a program that would efficiently manage the resources under its authority, reduce bycatch, minimize waste, and improve utilization so that the maximum benefit of these resources would be provided to present and future generations of fishermen, associated fishing industry sectors, fishing communities, consumers, and the Nation as a whole. The Council also committed itself to support the stability, economic well-being, and diversity of the seafood industry and to provide for the economic and social needs of communities dependent on that industry.

At its meeting in January 1993, the Council began evaluating the effectiveness of different alternatives to determine which ones would best meet the objectives of the CRP. The Council evaluated 11 different alternatives, each of which had qualities that would have helped achieve some of the objectives of the CRP. After comparing the strengths and weaknesses of all the alternatives,

the Council identified license limitation and transferable IFQ as the most viable alternatives.

Although transferable IFQ was identified as the alternative with the greatest potential for solving the most issues in the problem statement for the CRP, several problems prevented the Council from choosing this alternative as the first step in the CRP process. Also, the IFQ program for halibut and sablefish had not yet been implemented; therefore, any information or experience that would have been gained from the operation of that program was not then available. For these reasons, the Council, at its September 1993 meeting, raised LLP to a level of equal consideration with transferable IFQ as a management regime designed to meet the objectives of the CRP.

In January 1994, the Council adopted its Advisory Panel's recommendations to expedite the LLP alternative. This decision was based in part on the facts that the industry lacked a consensus on what specific form of a transferable IFQ alternative would be most appropriate, and because of concerns regarding the amount of time that would be necessary to produce an analysis and implement a transferable IFQ program. The transferable IFQ alternative was not dropped completely; rather, the Council considered it to be a potential second step in the overall CRP process. Advocates for the LLP argued that the LLP was a necessary first step in the CRP process because it could be implemented more expeditiously and because it would provide stability in the fishing industry while a transferable IFQ system was analyzed and implemented.

At its meeting in April 1994, the Council received an LLP/IFQ proposal from its State of Alaska representative. This proposal contained an integrated, step-wise approach consisting of an LLP followed by an IFQ program. This proposal became the basis for subsequent Council actions that culminated in June 1995 with the Council's adoption of the LLP. The Council transmitted Amendments 39, 41, and 5, which are the basis of the LLP, to NMFS on June 9, 1997. NMFS published a notice of availability (NOA) for Amendments 39, 41, and 5 on June 16, 1997 (62 FR 32579) and a proposed rule to implement Amendments 39, 41, and 5 on August 15, 1997 (62 FR 43865). Public comments on the amendments were accepted through August 15, 1997, and on the proposed rule through September 29, 1997. NMFS received 263 comments on the amendments and 67 comments on the proposed rule. The public comments concerning the LLP portion of the amendments and

proposed rule were consolidated into 21 specific issues to which NMFS provided responses (see Response to Comments on the LLP Portion of Amendments 39, 41, and 5). Amendments 39, 41, and 5 were approved by NMFS on September 12, 1997.

By providing stability in the fishing industry and by identifying the field of participants in the groundfish and crab fisheries, the LLP will act as an interim step toward a more comprehensive solution to the conservation and management problems of an open access fishery. Although the LLP is an interim step, it addresses some of the important issues in the problem statement developed for the CRP. By limiting the number of vessels that are eligible to participate in the affected fisheries, the LLP places an upper limit on the amount of capitalization that may occur in those fisheries. This upper limit will prevent future overcapitalization in those fisheries at levels that could occur if such a constraint was not present. The LLP will replace the current Vessel Moratorium, a program approved by NMFS in 1995 and implemented in 1996 (60 FR 40763, August 10, 1995).

#### License Limitation Program— Operational Aspects

##### 1. General

The LLP limits access to the commercial groundfish fisheries in the EEZ off Alaska, except for demersal shelf rockfish east of 140° W. long. and sablefish managed under the IFQ program (license limitation groundfish). The demersal shelf rockfish fishery east of 140° W. long. is excluded from the LLP because general management of this fishery is deferred to the State of Alaska. The State of Alaska is currently considering an alternative management program for this fishery. The fixed gear fishery for sablefish is excluded because that fishery is managed under the IFQ Program. The LLP also limits access to the commercial crab fisheries in the BSAI, managed pursuant to the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI.

##### 2. Nature of Licenses and Qualification Periods

A license for license limitation groundfish will be issued to an eligible applicant based on fishing that occurred from an eligible applicant's qualifying vessel in management areas (i.e., BSAI, GOA, or BSAI/GOA, or state waters shoreward of those management areas) during the general qualification period (GQP), and in endorsement areas defined by these regulations (i.e., Aleutian Islands, Bering Sea, Western

Gulf, Central Gulf, and Southeast Outside, or state waters shoreward of those endorsement areas) during the endorsement qualification period (EQP). A license will authorize a license holder to deploy a vessel from which directed fishing for license limitation groundfish species can be conducted in the endorsement areas designated on that license. This license also will be transferable. The GQP for license limitation groundfish is January 1, 1988, through June 27, 1992, except for a vessel under 60 ft (18.3 m) from which a documented harvest of license limitation groundfish was made with pot or jig gear prior to January 1, 1995. For those vessels, the GQP is extended through December 31, 1994. The Council recommended this extension so that a vessel could be used for qualification, although that vessel was deployed in the groundfish fisheries after June 27, 1992, because the gear that was used from that vessel minimized bycatch loss and waste due to discard mortality. Qualification under this extension will be limited to one endorsement area to limit the extent to which capacity might be increased. Minimizing bycatch loss and waste due to discard mortality is an important objective of the CRP. Additionally, an eligible applicant, whose qualifying vessel "crossed-over" to groundfish from crab under the provisions of the current Vessel Moratorium by June 17, 1995, also will qualify under the GQP for license limitation groundfish.

The EQP for license limitation groundfish is January 1, 1992, through June 17, 1995. The area endorsement(s) designated on a groundfish license will authorize a license holder to deploy a vessel from which directed fishing can be conducted in the following areas: (1) Bering Sea Subarea; (2) Aleutian Islands Subarea; (3) Western Area of the Gulf of Alaska; (4) Central Area of the Gulf of Alaska and the West Yakutat District; and (5) Southeast Outside District.

The dual qualification periods (i.e., the GQP and the EQP) are designed to account for past and recent participation in the affected fisheries. The GQP, which includes the qualification period for the current Vessel Moratorium, accounts for past fishing participation, and the EQP accounts for the recent fishing participation that occurred up to the Council's final action on the LLP (June 17, 1995). NMFS concurs with the Council's recommendation that a vessel must have a fishing history in both periods in order for the vessel owner to qualify for a license. The requirement that vessels have fishing histories during both periods is intended to ensure that only those vessel owners

with both past dependence and recent participation in the fishery qualify. The dual qualification periods for crab species licenses serve the same purpose.

Licenses for crab species will be issued to eligible applicants based on fishing that occurred from the qualifying vessel in the BSAI during the GQP, and for a specific species in an endorsement area (i.e., Aleutian Islands brown king, Aleutian Islands red king, Bristol Bay red king, Norton Sound red king and Norton Sound blue king, Pribilof red king and Pribilof blue king, St. Matthew blue king, and *Chionoecetes opilio* and *C. bairdi* (Tanner crab)) during the EQP. A license will authorize the license holder to deploy a vessel from which directed fishing for specific crab species can be conducted in Federal waters of the specific areas designated on each license. This license also will be transferable. The GQP for crab species is January 1, 1988, through June 27, 1992. Vessels that participated in the Norton Sound king crab fisheries and the Pribilof king crab fisheries are exempt from the harvesting requirements of the GQP because (1) the Norton Sound king crab fisheries began to be managed by the State of Alaska under a system of super-exclusive registration in 1993 and (2) the Pribilof king crab fisheries were closed from 1988 through 1992. Eligibility for those fisheries will be based exclusively on participation during a separate EQP as discussed below. Additionally, an eligible applicant, whose qualifying vessel "crossed-over" to crab from groundfish under the provisions of the current Vessel Moratorium by December 31, 1994, will also qualify under the GQP for crab species.

The EQP for crab species varies among seven area/species endorsements. The EQP for (1) Pribilof red and Pribilof blue king and (2) Norton Sound red and Norton Sound blue king is January 1, 1993, through December 31, 1994. The EQP for (3) *C. opilio* and *C. bairdi* (Tanner crab), (4) St. Matthew blue king, (5) Aleutian Islands brown king, and (6) Aleutian Islands red king is January 1, 1992, through December 31, 1994. The EQP for (7) Bristol Bay red king is January 1, 1991, through December 31, 1994. The Council designed these varying endorsement periods to accommodate the different patterns of season openings and closures for specific crab species. For example, the Bristol Bay red king crab fishery was not open in 1994; therefore, a 3-year participation window is provided by using a January 1, 1991, start date. The variations in the EQP for the Norton Sound king crab fisheries and the Pribilof king crab fisheries are

explained in the preceding GQP discussion.

### 3. License Designations and Vessel Length Categories

All licenses for license limitation groundfish and crab species will have a designation prescribing the activities the license holder is authorized to conduct on a deployed vessel. A catcher vessel designation on a groundfish license will authorize a license holder to deploy a vessel from which directed fishing for license limitation groundfish species can be conducted. A catcher vessel designation on a crab species license will authorize a license holder to deploy a vessel from which directed fishing for crab species can be conducted. The catcher vessel designation on a groundfish license will not authorize the processing of license limitation groundfish or crab species on board the vessel. A catcher/processor vessel designation on a groundfish license will authorize a license holder to deploy a vessel from which directed fishing for license limitation groundfish can be conducted and on which license limitation groundfish may be processed. Similarly, a catcher/processor designation on a crab species license will authorize a license holder to deploy a vessel from which directed fishing for crab species can be conducted and on which crab species may be processed. A license with a catcher/processor designation will also authorize a license holder to deploy a vessel for the purpose of directed fishing only for license limitation groundfish or crab species (i.e., processing that catch is not required).

Also, a license holder can change the vessel designation on a license from a catcher/processor vessel designation to a catcher vessel designation. This change in designation would be permanent. Once a vessel designation on a license is changed from a catcher/processor vessel designation to a catcher vessel designation, the license holder would no longer be able to process license limitation groundfish or crab species on that vessel.

The length overall (LOA) of a vessel is defined at 50 CFR § 679.2 as the horizontal distance between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments, measured in linear feet and rounded to the nearest foot. The size categories were selected to be consistent with the size categories in other programs; in addition, some observer requirements vary with vessel size, and these categories are consistent with

those observer requirements. The following convention will be used when rounding the LOA to the nearest foot:

(1) When the amount exceeding a whole foot measurement is less than 6 inches (15.2 cm), the LOA is equal to that whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 5 3/4 inches (37.9 m), the LOA of the vessel is 124 ft (37.8 m).

(2) When the amount exceeding a whole foot measurement is greater than 6 inches (15.2 cm), the LOA is equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 6 1/8 inches (38.0 m), the LOA of the vessel is 125 ft (38.1 m).

(3) When the amount exceeding a whole foot measurement is exactly 6 inches (15.2 cm), the LOA is equal to that whole foot measurement if the number is even; however, if the number is odd, the LOA is equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 6 inches (37.9 m), the LOA of the vessel is 124 ft (37.8 m), but, if the horizontal distance of the vessel is 59 ft, 6 inches (18.1 m), the LOA of the vessel is 60 ft (18.3 m).

Eligibility for a license will be based on a determination that the minimum number of documented harvests of license limitation groundfish and crab species for a specific vessel length category were made from a qualifying vessel. These categories are as follows: (1) Category "A", which comprises vessels with an LOA of 125 ft (37.8 m) or greater; (2) category "B", which comprises vessels with an LOA from 60 ft (18.3 m) to 124 ft (37.5 m); and (3) category "C", which are vessels with an LOA of 59 ft (18 m) or less. A vessel's length category will be determined based on the vessel's LOA on June 17, 1995, or, if the vessel was under reconstruction on that date, on the vessel's LOA on the date that reconstruction was completed.

A vessel that is participating under the current Vessel Moratorium may be lengthened to the maximum length overall (MLOA) specified on the vessel's Moratorium Qualification. The MLOA is determined by the following: For a vessel that was less than 125 ft (37.8 m) on June 24, 1992, its MLOA is 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (37.8 m), whichever is less. For a vessel that was 125 ft (37.8 m) or greater on June 24, 1992, its MLOA is the LOA of the vessel on June 24, 1992. Finally, for a vessel that was being reconstructed on June 24, 1992, its MLOA is determined as above but using the vessel's LOA on the date that reconstruction was completed, rather than its LOA on June 24, 1992.

The vessel lengthening provisions of the current Vessel Moratorium explained here provide some flexibility to lengthen a vessel under the LLP. Under the LLP, a vessel may be lengthened to its MLOA as determined by the rules under the current Vessel Moratorium, provided the vessel was lengthened before June 17, 1995, or, if not, provided the lengthening does not cause the vessel to exceed the maximum length allowed by the vessel's length category determined under the LLP. For example, a vessel that was 58 ft (17.7 m) on June 24, 1992, could be lengthened to 70 ft (21.4 m) under the provisions of the current Vessel Moratorium. If the reconstruction that resulted in the lengthening of the vessel to 70 ft (21.4 m) began before June 17, 1995, then the vessel will be classified in the "B" vessel length category, which applies to a vessel with an LOA equal to or greater than 60 ft (18.3 m) but less than 125 ft (38.1 m). However, if the reconstruction that resulted in the lengthening of the vessel began after June 17, 1995, the vessel will be classified in the "C" vessel length category (based on its LOA on June 17, 1995), which applies to a vessel with an LOA of 59 ft (18 m) or less. Therefore, although a vessel may be lengthened under the provisions of the current Vessel Moratorium, a vessel that is reconstructed after June 17, 1995, may not be lengthened beyond the maximum length of its vessel length category based on that vessel's LOA on June 17, 1995 (or the vessel's LOA on the date reconstruction was completed if the vessel was under reconstruction on June 17, 1995), and still be eligible to be deployed for LLP fishing by the license holder based on a license resulting from the documented harvests that occurred from that vessel. For a vessel that was lengthened before June 17, 1995, or that was under reconstruction on June 17, 1995, NMFS will require evidence of the date the vessel was lengthened, and the LOA of the vessel before and after that date. In addition, NMFS will require evidence of the vessel's LOA on June 17, 1995. In such circumstances, evidence bearing upon the vessel's LOA on the relevant dates could consist of a past marine survey, an original builder's certificate, any admeasurement documents submitted to the U.S. Coast Guard National Vessel Documentation Center, a certificate of registration that states the vessel's length, or other credible evidence. For the convenience of initial issues and future transferees, an LLP license will be designated with an MLOA, which will limit the maximum



length of a vessel that can be deployed by the license holder.

#### 4. Harvest Requirements—Groundfish

The number of documented harvests that must have been made by a vessel for an eligible applicant to qualify for a particular area endorsement for a groundfish license vary according to vessel length category, the area, and vessel designation. These different requirements are designed to account for differences in the operational characteristics of the fisheries, differences in the geographical areas in which the fisheries are prosecuted, and differences in the social and economic conditions that affect participants in the fisheries from various coastal areas. For instance, the dependence of fishing communities around the GOA on small vessel fleets is accounted for by requiring only a single harvest during the appropriate time periods for a vessel less than 60 ft (18.3 m) LOA to qualify for an endorsement. The single harvest requirement is extended to the Western Gulf for a vessel that qualifies for a catcher vessel designation and is less than 125 ft (37.8 m) LOA because public testimony during Council consideration of the LLP indicated that local fleets did not participate in that area during the earlier portion of the EQP. Consequently, excluding those fleets from adjacent fishing grounds through more stringent harvesting requirements would have significantly harmed local communities currently dependent on those fisheries. A vessel in the Western Gulf that qualifies for a catcher/processor vessel designation and that is from 60 ft (18.3 m) to less than 125 ft (37.8 m) LOA has the same documented harvesting requirements as do all vessels of similar length in the Central Gulf area and Southeast Outside district because of its fishing capacity. Also, NMFS determined that requiring a single documented harvest would best reflect the operational characteristics of the fisheries in those areas. This determination was based on information in the EA/RIR indicating that requiring more than one documented harvest in the Bering Sea subarea and Aleutian Islands subarea would unduly burden small vessels but would not affect larger vessels. The larger vessels contributed to the largest portion of capacity for the fishing fleet in those areas. Finally, public testimony during consideration of the LLP indicated that some vessels that qualified under the current Vessel Moratorium entered into the fishery during the latter portion of the EQP. Also, based on the Council's recommendation, NMFS added a provision to the EQP requirements that,

in certain areas, four documented harvests made from a vessel between January 1, 1995, and June 17, 1995, are sufficient for an area endorsement. NMFS believes that four documented harvests will be sufficient to show that a person intended to remain in the fishery and that his or her participation was not merely speculative and opportunistic. Based on these considerations, NMFS establishes the following harvesting requirements:

For a vessel classified in any of the three vessel length categories ("A," "B," or "C"), at least one documented harvest of a license limitation groundfish species made from that vessel in the appropriate area during the EQP is necessary to qualify an eligible applicant for an Aleutian Islands area endorsement or for a Bering Sea area endorsement.

For a vessel classified in vessel length category "C," at least one documented harvest of license limitation groundfish species made from that vessel in the appropriate area during the EQP is necessary to qualify an eligible applicant for a Western Gulf area endorsement, a Central Gulf area endorsement, and a Southeast Outside area endorsement.

For a vessel classified in vessel length category "B" and eligible for a catcher vessel designation, at least one documented harvest of license limitation groundfish species made by that vessel in the appropriate area during the EQP is necessary to qualify an eligible applicant for a Western Gulf area endorsement.

For a vessel classified in vessel length category "B," at least one documented harvest of license limitation groundfish species made by that vessel in the appropriate area in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or four documented harvests of license limitation groundfish species made from that vessel in the appropriate area between January 1, 1995, through June 17, 1995, is necessary to qualify an eligible applicant for a Central Gulf area endorsement or a Southeast Outside area endorsement. This documented harvest requirement also will apply to a Western Gulf area endorsement for a vessel eligible for a catcher/processor vessel designation and classified in vessel length category "B."

For a vessel classified in vessel length category "A," at least one documented harvest of license limitation groundfish species made from that vessel in the appropriate area in each of any 2 calendar years from January 1, 1992, through June 17, 1995, is necessary to qualify an eligible applicant for a

Central Gulf area endorsement, a Southeast Outside area endorsement, or a Western Gulf area endorsement.

#### 5. Harvest Requirements—Crab Species

The number of documented harvests made from a vessel that an eligible applicant must demonstrate to qualify for a particular area/species endorsement for a crab species license varies according to the crab species. The Council recommended different requirements so that incidental catches would not qualify a person for a license (e.g., incidentally caught Tanner crab with red or blue king), but, in fisheries where a single harvest may have indicated that a person intended to remain in a fishery (e.g., the Pribilof red and blue king crab fishery that was closed from 1988 through 1992), minimal participation would be recognized. The following requirements were recommended by the Council and approved by NMFS: (1) For a red and blue king crab license, at least one documented harvest of the appropriate crab species made from a vessel in the appropriate fishery during the EQP; and (2) for a brown king and Tanner crab license, at least three documented harvests of the appropriate crab species made from a vessel in the appropriate fishery during the EQP.

The appropriate fishery is the area, as defined in the regulations, that corresponds to the area/species endorsement for which the eligible applicant is seeking qualification. Only documented harvests will qualify the applicant. As defined in the regulations, a documented harvest means a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvest.

#### 6. License Recipients

A license will be issued only to an eligible applicant. An eligible applicant must have been eligible on June 17, 1995 (the date of final Council action on the LLP), to document a fishing vessel under Chapter 121 of Title 46, U.S.C. As defined by these regulations, an eligible applicant is (1) the owner, on June 17, 1995, of a qualified vessel or (2) the person to whom the qualified vessel's fishing history was transferred or retained by written contract provided that the express terms of that contract clearly and unambiguously indicate that the qualified vessel's fishing history was transferred or retained. NMFS will recognize written contracts to the extent practicable; however, in the event of a dispute concerning the disposition of the fishing history by written contract, NMFS will not issue a license until the

dispute is resolved by the parties involved. The following presumptions will be used to determine the qualification for a license in the absence of a written contract provision addressing the vessel's fishing history: First, if a vessel was sold on or before June 17, 1995, it will be presumed that the vessel's fishing history and license qualification were transferred with the vessel. Second, if a vessel was sold after June 17, 1995, it will be presumed that the vessel's fishing history and license qualification remained with the seller. Furthermore, only one license will be issued based on the fishing history of any qualified vessel. For instance, a vessel's fishing history cannot be divided so that multiple licenses would be issued. Also, if there were multiple owners of a qualified vessel on June 17, 1995, then one license will be issued in the names of the multiple owners or of the appropriate successors in interest. A qualified vessel is one from which documented harvests were made during the appropriate qualifying periods listed in 50 CFR § 679.4(i)(4) and (5) of this rule.

Also, an otherwise qualified individual who can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 would be considered an eligible applicant.

#### *7. Application and Transfer Processes for the LLP*

NMFS is currently developing a notice of proposed rule making to explain and formalize the process for applying for a license and transferring a license under the LLP. Consequently, issues related to the application and transfer processes will be addressed in that notice of proposed rulemaking.

#### *8. License Severability and Ownership Caps*

A vessel designation, an MLOA, and area endorsements (groundfish) or area/species endorsements (crab species) are constituent parts of, and not severable from, a license. For example, a license holder who has a groundfish license with two endorsements (e.g., a Southeast Outside area endorsement and a Central Gulf area endorsement) cannot request that the single license with two endorsements be split into two licenses with one endorsement each thus making it possible to retain one license (with one endorsement) and transfer the other (with the other endorsement). All endorsements must be transferred with the license because endorsements are not severable from the license.

Also, for at least 3 years after the effective date of the LLP, a groundfish

license and crab species license initially issued to a person are not severable if those licenses resulted from documented harvests made from the same qualifying vessel. The Council intends to review the issue of severability 3 years after implementation of the LLP. The Council may remove the prohibition on severing initially issued groundfish and crab species licenses if, after its review, the Council decides that the reason for non-severability (i.e., excess effort in the fisheries) has been ameliorated.

A person is limited to a maximum of 10 groundfish licenses and a maximum of five crab species licenses, unless that person is initially issued more than those numbers of licenses, in which case the person can hold more licenses than the specified maximum. However, a person who has more groundfish licenses than the specified maximum for groundfish licenses cannot receive a groundfish license by transfer until that person's number of groundfish licenses which that person has is less than the specified maximum. The same is true for crab species licenses. After obtaining transfer eligibility by dropping below the specified maximum, a person cannot exceed that specified maximum, notwithstanding the earlier status of being allowed to exceed the specified maximum on initial issuance. These limits prevent any person from obtaining an excessive share of harvest privileges in the affected fisheries as required by national standard 4 of the Magnuson-Stevens Act.

#### *9. Other Provisions*

Several other provisions are included in the LLP. First, persons who target species not included in the groundfish portion of the LLP and who were allowed to land incidentally taken license limitation groundfish species prior to the implementation of the LLP are authorized, under the LLP, to continue landing bycatch amounts of license limitation groundfish species without a groundfish license. This provision will reduce the waste that occurs when bycatch is required to be discarded and is consistent with the objectives of national standard 9 of the Magnuson-Stevens Act. This is especially true for programs like the IFQ program for sablefish and halibut, where the targeted species and license limitation groundfish species may be found in the same habitat area.

Second, an eligible applicant who qualifies for a license based on the documented harvests of a vessel that was lost or destroyed before the application process will be eligible for the license and accompanying

endorsements. This license could not be used for harvesting applicable species unless the vessel on which the license is used conforms with all the requirements of the license, including MLOA and vessel designation.

Third, an "unavoidable circumstances" provision is included in the LLP. Through this provision, an applicant may be found eligible to receive a license, even though the vessel fishing history on which that eligibility is based does not meet the standard eligibility criteria for a license. To be issued a license under the unavoidable circumstances provision, an applicant's eligibility must be based on a vessel which can document a harvest of license limitation groundfish species or of crab species, if applicable, between January 1, 1988, and February 9, 1992. The applicant must also provide evidence that the vessel was subsequently lost, damaged, or unable to qualify the applicant for a license under the criteria in 50 CFR § 679.4(i)(4) or (5) due to factors beyond the control of the owner (or owners, if applicable) of the vessel at time the vessel was lost, damaged, or otherwise unable to meet the qualifying criteria. Furthermore, the applicant must demonstrate that:

(1) The owner(s) of the vessel at time the vessel was lost, damaged, or otherwise unable to meet the qualifying criteria held a specific intent to conduct directed fishing for license limitation groundfish (or for crab species, if applicable) with that vessel during a specific time period in a specific area.

(2) The specific intent to conduct directed fishing for license limitation groundfish (crab species) with that vessel was thwarted by a circumstance that was—

- (a) Unavoidable;
- (b) Unique to the owner(s) of that vessel or unique to that vessel; or
- (c) Unforeseen and reasonably unforeseeable to the owner(s) of the vessel.

(3) The circumstance that prevented the owner(s) from conducting directed fishing for license limitation groundfish (crab species) actually occurred.

(4) Under the circumstances, the owner(s) of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish (crab species).

(5) A documented harvest of license limitation groundfish (crab species) was made from the vessel, or its replacement, in the specific area that corresponds to the area endorsement (or area/species endorsement, if applicable) for which the claimant is applying after

the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

If all these criteria are met to the satisfaction of NMFS, a license may be issued for the relevant fishery and endorsement area. This provision is not designed to be a "loop hole" through which an eligible applicant that does not meet the qualification requirements can be issued a license. If an eligible applicant fails to demonstrate that an unavoidable circumstance prevented the vessel from meeting the qualifications in § 679.4(i)(4) or (5), NMFS will not issue a license.

Fourth, a license will be issued to an eligible applicant whose eligibility for a license is based on a vessel which can document a harvest of license limitation groundfish during the GQP in one management area and the required minimum number of documented harvests of license limitation groundfish were made during the EQP in an endorsement area in the other management area. For example, suppose an eligible applicant is basing his or her eligibility on a vessel in length category "C" from which only two documented harvests of license limitation groundfish species were made. The first documented harvest was of license limitation groundfish species that occurred in the BSAI on December 31, 1991, and the second documented harvest was of license limitation groundfish species that occurred in the Central Gulf endorsement area on June 16, 1995. Although the eligible applicant would not qualify for a license under the standard eligibility criteria (i.e., by basing eligibility on documented harvests of license limitation groundfish species made from a vessel during the GQP and the EQP in the same management area), this eligible applicant would qualify for a license under this alternative method of eligibility. Section 679.4(i)(4)(iv) and (v) provides that if a documented harvest of license limitation groundfish is made from a vessel during the GQP (and not the EQP) in one management area and a documented harvest of license limitation groundfish is made from that same vessel during the EQP (and not the GQP) in the other management area, then the eligible applicant who is basing his or her eligibility on that vessel would qualify for a license for the management area in which the documented harvests were made during the EQP. The eligible applicant in the example above would receive a license for the Gulf of Alaska with a Central Gulf area endorsement.

#### Consistency With Section 303(b)(6) of the Magnuson-Stevens Act

Any FMP or FMP amendment that establishes a system of limited access to achieve OY must meet the guidelines established in Section 303(b)(6) of the Magnuson-Stevens Act. These guidelines state that the preparers must take into account (1) present participation in the fishery; (2) historical fishing practices in, and dependence on, the fishery; (3) the economics of the fishery; (4) the capability of fishing vessels in the fishery to engage in other fisheries; (5) the cultural and social framework relevant to the fishery; and (6) any other relevant considerations.

The administrative record for the LLP is replete with examples of the Council considering the issues enumerated in the Section 303(b)(6) guidelines of the Magnuson-Stevens Act. The two-part qualification period (i.e., the GQP and the EQP) is an example of the Council balancing present participation in the fishery (EQP) and historical practices in, and dependence on, the fishery (GQP). The economics of the fishery was a primary consideration in the development of the LLP. Some of the factors considered included overcapitalization in the industry, too many vessels chasing too few fish (overcapacity), and the gradual shifting from an artisanal fleet to an industrial fleet. This final factor was a major concern because it had the potential of adversely affecting small coastal communities dependent on an artisanal fleet.

The current state of overcapitalization in most U.S. fisheries makes the fourth guideline seem like an anomaly. The concern for the capability of a vessel displaced from one fishery to enter another fishery, however, is for the individual owner of that displaced vessel and not for the fishery as a whole. Most vessels in the affected fisheries are not so unique as to make these modifications prohibitive. In fact, certain provisions of the LLP are specifically included because of the flexibility of fishing vessels used in waters off Alaska (e.g., 32-foot or 9.7 meter vessel exemption in the BSAI).

The Council carefully evaluated the cultural and social framework relevant to the fishery. For instance, the Council commissioned the development of community profiles for over 130 communities in Alaska and in the Pacific Northwest, a sector description and preliminary social impact assessment, and a final social impact assessment for its evaluation. Several aspects of the LLP are a direct result of

the cultural and social framework of the fisheries. For example, the Multispecies Community Development Quota (CDQ) Program was developed by the Council and approved by NMFS concurrent with the LLP. Also, the no-trawl zone east of 140° W. long, which was designed to preserve artisanal fishermen and the small coastal communities in SE. Alaska that depend on them, is a prime example of the Council considering the cultural and social framework of the affected fisheries.

#### Fisheries Impact Statement

Section 303(a)(9) of the Magnuson-Stevens Act requires that Councils in every FMP or FMP amendment they submit to the NMFS for approval include a fishery impact statement (FIS) that assesses, specifies, and describes the likely effects of the proposed conservation and management measures on participants in the affected fisheries and participants in fisheries in adjacent areas. The following is a summary of the FIS found in the EA/RIR for this action:

The LLP will place limitations on current participants in the affected fisheries. First, current participants will be limited to deploying a vessel in areas for which they hold a license and an area endorsement. Second, vessel replacements and upgrades will be limited by length and designation specified on the license. Third, current participants will have to meet the specific eligibility criteria of the LLP to receive a license authorizing participation in the affected fisheries.

Although the LLP will exclude some current participants who did not fish during the GQP, these excluded persons can gain access to the affected fisheries by obtaining a license through transfer. Also, the total allowable catches (TAC) for the affected fisheries are not expected to change based on implementation of the LLP. Nor will the implementation of the LLP affect fishery product flow, total revenues derived from the affected fisheries, or regional distribution of vessel ownership. The LLP will ameliorate, but not totally eliminate, overcapacity, overcapitalization, and vessel safety concerns perpetuated under status quo management.

Due to the geographical location of the affected fisheries, there are no adjacent areas under the authority of other Regional Fishery Management Councils. However, participants in fisheries in other areas could face increased pressures from new entrants excluded from the affected fisheries. This increased pressure is expected to be nominal, in any case, because of the increasingly small number of open

access fisheries available in the EEZ off the west coast of the United States. In fact, the LLP is intended to prevent just the opposite effect (i.e., a surge of new entrants to the fisheries in the EEZ off Alaska from among those persons that have been excluded from newly limited fisheries in the EEZ off the west coast of the contiguous United States).

#### Changes to the Final Rule

The following addresses all substantive changes to the final rule. Editorial changes are not discussed.

A definition for the term "documented harvest" is added to the final rule. The term "documented harvest" replaces "legal landing" throughout the final rule. The new term more accurately describes the activity necessary for eligibility. Included in the proposed definition of legal landing was the activity of off-loading. Off-loading is not necessary for eligibility. Further, the area endorsement(s) a person is issued should reflect the area in which fishing occurred, not the area in which the fish was delivered.

Any references to designating a specific vessel on a license is eliminated in the final rule. A license can be used on any vessel that complies with the MLOA designated on the license and that meets other regulatory requirements. Designating a specific vessel on a license would mean that a license holder would need to request a transfer before that license could be used on a vessel different from the one designated on the license. Making a transfer necessary for such behavior would constrain the flexibility of the license holder and increase the administrative costs to NMFS. Therefore, this requirement is eliminated.

The definition of "eligible applicant" is revised to add a paragraph to accommodate individuals that can demonstrate eligibility for the LLP pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794(a). This addition clarifies that otherwise qualified individuals may avail themselves of the appropriate provisions of the Rehabilitation Act of 1973 when applying for licenses under the LLP.

The rule is revised to require that the "maximum length overall (MLOA)" be designated on the license. NMFS determined that the MLOA, and not the vessel length category, is the constraining factor on what size vessel can be used based on the license; therefore, designating the vessel length category is unnecessary and can be confusing because general vessel lengths, under the vessel length

categories, can exceed a specific vessel's MLOA. Despite these changes, vessel length categories are still in the final rule because they are used to determine the minimum documented harvest requirements for area endorsements.

The crab species designations of Adak red king, Adak brown king, and Dutch Harbor brown king crab are eliminated from the final rule. These designations are eliminated because the Alaska Department of Fish and Game has combined the crab management areas of Adak and Dutch Harbor into a new Aleutian Islands Area (State of Alaska Registration Area O). Those persons who would have qualified for an Adak red king area/species endorsement, under the provisions of the proposed rule, will be issued an Aleutian Islands red king area/species endorsement, and those persons who would have qualified for an Adak brown king area/species endorsement or a Dutch Harbor brown king area/species endorsement, under the provisions of the proposed rule, will be issued an Aleutian Islands brown king area/species endorsement. Also, the area/species endorsement definitions for Adak red king crab, Adak brown king crab, and Dutch Harbor brown king have been eliminated from the final rule, and new area/species endorsement definitions for Aleutian Islands red king and Aleutian Islands brown king have been added to the final rule to reflect this combination.

In § 679.4(i)(2)(iv), the term "CDQ" is removed and replaced with the term "CDP." This correction is consistent with the original intent of the proposed rule. The publication in the proposed rule of CDQ, rather than CDP, was a typographical error.

In § 679.4(i)(3)(ii), paragraph (i)(3) is added to describe the forms of evidence that can be used to verify the processing activity of a vessel for purposes of establishing eligibility for a catcher/processor designation.

In § 679.4(i)(4), text is added to describe the forms of evidence that can be used to verify a documented harvest for purposes of establishing eligibility for a groundfish license.

In § 679.4, paragraphs (i)(4)(iv) and (v) are changed to increase the reader's understanding of the criteria necessary for receiving a license based on participating in different fishery management areas during the GQP and the EQP. The changes are stylistic and not substantive; therefore, none of the criteria has changed from the proposed rule.

The regulatory text in § 679.4(i)(6) *Application for a groundfish license or a crab species license* and in § 679.4(i)(7) *Transfers* is removed, and

these paragraphs are reserved. NMFS is currently developing a notice of proposed rulemaking regarding the application and transfer processes. When the rulemaking for the application and transfer processes is completed, regulatory text will be added to these reserved paragraphs.

In § 679.7(j)(2), (3), (4), and (5), the terms "original" and "valid" are added in front of the terms "groundfish license" and "crab species license," respectively. This change was made to clarify that nothing other than an original valid license will be accepted as proof of authority to deploy a vessel in the affected fisheries.

#### Response to Comments on the LLP Portion of Amendments 39, 41, and 5

*Comment 1:* The LLP fails to address the overcapitalization problem in the Federal fisheries off Alaska.

*Response:* The LLP is intended to be part of a step-wise approach toward eliminating excess capital investment in the Federal fisheries off Alaska. Although the LLP does not totally solve the overcapitalization problem, as was clearly indicated in the analysis for the LLP, the LLP does define and limit the field of participants in these Federal fisheries. This step is critical to the further development of management programs that will more fully address the overcapitalization issues. Also, the LLP will limit license holders to discrete management areas for which the license is authorized based on past participation, unlike the current Vessel Moratorium, which allowed permit holders unrestricted movement throughout the EEZ off Alaska.

The LLP is designed to be a framework program to which other programs (e.g., vessel and license buyback, individual bycatch accountability, and individual fishing quotas) could be added to reduce capitalization in the future. The LLP will be available as a future basis for further addressing overcapitalization. Substantial interest in establishing an industry-sponsored buyback for the crab portion of the LLP has already been expressed by industry participants and the Council. As stated earlier, by identifying the field of participants in the groundfish and crab fisheries and, thereby, providing stability in the fishing industry, the LLP is an interim step toward a more comprehensive solution to the conservation and management problems inherent in an overcapitalized fishery. Although the LLP is an interim step, it addresses some of the important issues in the problem statement developed for the CRP. The LLP, through the limits it

places on the number of vessels that can be deployed in the affected fisheries, places an upper limit on the amount of capitalization that could occur in those fisheries. This upper limit will prevent overcapitalization in those fisheries at levels that could occur in the future if such a constraint was not present.

*Comment 2:* The Council did not consider all reasonable alternatives when choosing the LLP option.

*Response:* At its meeting in January 1993, the Council began evaluating the effectiveness of different alternatives to determine which ones would best meet the objectives of the an CRP developed for the Federal groundfish and crab fisheries off Alaska. These alternatives included (1) exclusive area registration, (2) seasonal allocations, (3) license limitation, (4) gear allocations, (5) inshore/offshore allocations, (6) CDQ allocations, (7) trip limits, (8) IFQ for prohibited species catch, (9) non-transferable IFQ, (10) transferable IFQ, and (11) harvest privilege auctions. All the alternatives had qualities that would have helped achieve some of the objectives of the CRP; however, after comparing the strengths and weaknesses of the alternatives, the Council identified license limitation and transferable IFQ as the most viable alternatives.

Although transferable IFQ was identified as the alternative with the greatest potential for solving the most issues in the problem statement for the CRP, several problems prevented the Council from choosing this alternative as the first step in the CRP process. For example, determinations about who should be found eligible to receive an initial allocation of quota or how much initial quota should be issued to each eligible applicant would have been exceedingly difficult. Also, since the IFQ program for halibut and sablefish had not yet been implemented, any information or experience that would have been gained from the operation of that program was not then available. For these reasons, the Council, at its meeting in September 1993, raised LLP to a level of equal consideration with transferable IFQ as a management regime designed to meet the objectives of the CRP.

In January 1994, the Council adopted its Advisory Panel's recommendations to expedite the LLP alternative. This decision was made because the industry lacked a consensus on the specific form of a transferable IFQ alternative and a concern about the amount of time that would be necessary to produce an analysis and implement a transferable IFQ program. The transferable IFQ alternative was not dropped completely;

rather, it was considered by the Council as a potential future step in the overall CRP process. Advocates for the LLP argued that the LLP was a necessary first step in the CRP process because it could be implemented more quickly than a transferable IFQ system, and because it would provide stability in the fishing industry while a transferable IFQ system was analyzed and implemented. The above discussion demonstrates that the Council did review and consider reasonable alternatives before deciding that the LLP was the best choice for the next step in the CRP process.

*Comment 3:* Amendments 39, 41, and 5 are not fair and equitable by providing different criteria for license qualification by management area and vessel class.

*Response:* National standard 4 of the Magnuson-Stevens Act in pertinent part requires that, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be fair and equitable to all such fishermen and reasonably calculated to promote conservation.

The different criteria for license qualification accounts for differences in the operational characteristics of the fisheries, differences in the geographical areas in which the fisheries are prosecuted, and differences in the social and economic conditions that affect participants in the fisheries from various coastal areas. For instance, the dependence of many fishing communities around the Gulf of Alaska on small vessel fleets is accounted for by requiring that only one documented harvest be made from a vessel less than 60 ft (18.3 m) LOA during the appropriate time periods to qualify for an endorsement. The single documented harvest requirement is extended to catcher vessels less than 125 ft (37.8 m) LOA in the Western Gulf because public testimony during Council consideration of the LLP indicated that local fleets did not participate in that area during the earlier portion of the EQP.

Consequently, the Council concluded that excluding those fleets from adjacent fishing grounds through more stringent harvesting requirements would cause significant harm to local communities dependent on those fisheries. Catcher/processor vessels in the Western Gulf area that are from 60 ft (18.3 m) to less than 125 ft (37.8 m) LOA also have the same documented harvest requirements like vessels of similar length in the Central Gulf area and Southeast Outside district because of their fishing capacity. Further, based on information in the LLP analysis indicating that multiple harvest requirements in the Bering Sea subarea and Aleutian Islands subarea would unduly burden small vessels but

would not affect larger vessels, which contributed to the largest portion of capacity in the fishing fleet in those areas, NMFS has concluded that a single documented harvest requirement best reflects the operational characteristics of the fisheries in those areas. Finally, the Council received public testimony during consideration of the LLP that some vessels that qualified under the current Vessel Moratorium entered into the fishery during the latter portion of the EQP. Based on that testimony, the Council recommended, and NMFS approved, a four documented harvest provision to the EQP harvest requirements in certain areas to account for participation from these vessels. NMFS believes that requiring four-documented harvests is sufficient to show that a person intended to remain in the fishery and that his or her participation was not merely speculative and opportunistic. The LLP complies with national standard 4.

*Comment 4:* The license caps are arbitrary and capricious and will not prevent any particular individual, corporation, or other entity from acquiring an excessive share of privileges under the LLP.

*Response:* National standard 4 of the Magnuson-Stevens Act in pertinent part requires that, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. NMFS analyzed the number of participants that would be licensed in each endorsement area if maximum consolidation occurred (i.e., if all participants in a specific area held the maximum number of licenses allowed under the proposed license cap—10 licenses for groundfish and 5 licenses for crab), and concluded that those numbers did not result in any particular individual, corporation, or other entity acquiring an excessive share of privileges under the LLP.

*Comment 5:* Although it was purported to be an interim step, no sunset date was included in the LLP.

*Response:* The Council did not have an established timetable for the next step in the CRP process. The Magnuson-Stevens Act mandated a studies of quota-based systems, which are being conducted by the National Research Council. Until those studies are concluded, the Council would be unable to properly analyze the next step toward CRP, especially if that step ends up being a quota-based management program. A sunset date for a portion of a step-wise comprehensive program is



potentially dangerous if the succeeding step for that program is not under development and may lead to the premature rescission of a necessary management measure. Furthermore, the absence of a sunset date does not preclude the Council from recommending a substitute for the LLP at any time in the future.

*Comment 6:* The LLP allows the qualification of groundfish vessels that participated only in state waters.

*Response:* Most FMP groundfish species in and off Alaska are considered a single stock with total allowable catches that are based on data from fisheries in the federally managed EEZ (3–200 miles or 2.6–261 nautical miles) and in the territorial waters of the State of Alaska (0–3 miles or 0–2.6 nautical miles). Therefore, any catch made by fishermen exclusively in territorial waters was already included in the annual specifications for FMP groundfish fisheries. Furthermore, vessels qualified under the Vessel Moratorium, the current limited access program, with harvests exclusively in state waters. Allowing state water harvests to qualify a vessel under the LLP takes into account current and past participation and is consistent with the Vessel Moratorium.

*Comment 7:* Amendments 39, 41, and 5 are not fair and equitable by allowing a quota system for certain Western Alaska communities and not allowing a quota system for groundfish fishermen.

*Response:* The use of a quota-based system for Western Alaska communities was already in existence for certain species (i.e., pollock, sablefish, and halibut) when the Council proposed a 7.5-percent allocation of other species to the CDQ program as part of the LLP. An allocation was specifically required by the Magnuson-Stevens Act, whereas using individual quota-based management for other fisheries was specifically banned by the Magnuson-Stevens Act until further study. Approving the LLP does not preclude the use of quota-based management in the future if Congress decides that its current ban on using quota-based management systems for fisheries should be removed.

*Comment 8:* NMFS should ban the use of all factory trawlers in Federal waters off Alaska.

*Response:* Banning all factory trawlers in Federal waters off Alaska was not an alternative analyzed during the development of the LLP. Any vessel for which sufficient participation in, and dependence, on the basis for the affected fisheries can be demonstrated can be eligible for a license under the LLP.

*Comment 9:* NMFS should reduce bycatch and waste resulting from bycatch.

*Response:* National standard 9 of the Magnuson-Stevens Act requires conservation and management measures, to the extent practicable, to minimize bycatch and, to the extent bycatch cannot be avoided, to minimize the mortality of such bycatch. In compliance with this requirement, the LLP includes a provision that specifically provides that a person who does not hold an LLP license may keep up to the maximum retainable bycatch amount of a license limitation groundfish species caught while participating in another fishery not covered by the LLP. This provision was included in the LLP to minimize discard mortality of these species through utilization.

Also, through a separate rulemaking, NMFS has implemented an Improved Retention/Improved Utilization Program for certain groundfish species in the GOA and the BSAI (62 FR 65379, December 12, 1997). The IR/IU Program is designed to reduce discard mortality by requiring fishermen to retain and utilize a specified percentage of fish product that was previously discarded. NMFS anticipates that combined efforts of the LLP and the IR/IU program will assist in reducing bycatch.

*Comment 10:* NMFS should protect critical habitat.

*Response:* Protection and preservation of critical habitat is a top priority for NMFS. However, none of the alternatives analyzed for the LLP pertained to critical habitat, nor does the LLP.

*Comment 11:* The LLP does not contain a provision to allow for a small amount of processing on a vessel that is deployed based on a license with a catcher vessel designation.

*Response:* One of the motions considered by the Council when it adopted the LLP was to allow a vessel deployed based on a license with a catcher vessel designation to process limited amounts of LLP groundfish. This motion included daily processing limits of up to 18 mt per vessel. After Council discussion, the motion was disapproved primarily because of enforcement concerns about monitoring the processing limits. Also, the Council concluded that a person who desires to process fish at sea but who has a license with a catcher vessel designation could obtain through transfer a license with a catcher/processor designation.

*Comment 12:* Licenses issued under the LLP program are not gear specific (i.e., a vessel deployed based on a license can use any legal gear, despite

the type of gear used to qualify for the license). This lack of gear specificity may contribute to overcapacity in the affected fisheries.

*Response:* During the development of the LLP, the Council considered a motion to make licenses gear specific. The motion was withdrawn after Council staff informed the Council that gear specificity was not an alternative that had been thoroughly analyzed. The concept of gear specificity raises issues about making gear specificity apply by area, as opposed to the overall license, criteria for determining what gear to assign, and the number of potential gear changes. These issues should be analyzed and evaluated before a specific gear provision is added to the LLP.

The LLP is designed to ameliorate, but not totally eliminate, overcapacity and overcapitalization, as perpetuated under status quo management. While developing the LLP, the Council contemplated that further steps would need to be taken in the future to meet the goals of the CRP. At its February 1998 meeting, the Council directed staff to consider adding a specific gear provision to the LLP. If adopted, a specific gear provision may be one of the steps used to further rationalize the groundfish fisheries in the EEZ off Alaska.

*Comment 13:* The LLP contains an exemption for vessels that, after November 18, 1992, were specifically constructed for and used exclusively in accordance with a Community Development Plan (CDP) approved by NMFS. Accordingly, these vessels do not exceed 125 ft (38.1 m), and are designed and equipped to meet specific needs that are described in the approved CDP. This exemption may contribute to overcapacity in the affected fisheries.

*Response:* This exemption, which was also included in the current Vessel Moratorium, is intended to assist Community Development Quota (CDQ) groups in recovering the costs for vessels built specifically for prosecuting CDQ fisheries. NMFS does not anticipate that a significant number of vessels will be built to use this exemption. In fact, no vessel used the similar exemption provided in the current Vessel Moratorium. Also, vessels no longer connected with a CDQ group (i.e., no longer used in accordance with a CDP) would not be exempt from the requirements of the LLP.

*Comment 14:* The suggestion by NMFS of using documented length, rather than actual length, for LOA is not feasible. Documented length has no consistency among vessels of the same actual length. Also, vessel owners who availed themselves of the "20 percent

rule" under the current Vessel Moratorium could be disqualified from participation under the LLP if LOA is based on documented length.

*Response:* NMFS concurs. In the notice of proposed rule-making, NMFS requested comments about the possibility of using documented length rather than actual length because of difficulties that had been reported with at-sea monitoring for compliance with existing vessel length categories, thereby, impairing at-sea enforcement of fishery regulations. However, all the comments received on this issue supported the current method of determining LOA by actual length. Based on these comments, NMFS has decided to not change the current definition of LOA at § 679.2 and to enforce LOA rules on shore or in port.

*Comment 15:* A license issued on the basis of past participation to an eligible applicant who is not currently participating in a fishery is a "latent license." Latent licenses will be issued under the LLP because the time periods used to determine eligibility for a license and the time period between the development and the implementation of the LLP will mean that a person can receive a license even if that person has not deployed a vessel in 1996 and 1997. The issuance of latent licenses will contribute to overcapacity in the affected fisheries.

*Response:* The time periods established to determine eligibility (i.e., the GQP and the EQP, as well as the June 17, 1995, eligibility date) are fixed in the FMP language approved by NMFS and, therefore, cannot be changed through the regulatory process. When the time periods and the eligibility date were selected, they were contemporaneous with the date of final action by the Council. A provision to require participation in 1996 or 1997 as a prerequisite for a license would require FMP amendments to change the current language in the relevant FMPs. At its February 1998 meeting, the Council directed staff to analyze adding more recent participation (e.g., documented harvests in 1995, 1996, and/or 1997) as a prerequisite to eligibility for a crab species license. If adopted, a more recent participation requirement may ameliorate the impacts of latent licenses on the affected fisheries.

*Comment 16:* Overcapacity and overcapitalization can be reduced by instituting a license buyback program for the LLP.

*Response:* The Council discussed the merits of a license buyback program during the development of the LLP; however, a buyback program was not

included in the LLP because the funding method analyzed was determined to be beyond the authority of the Council (i.e., requiring all license recipients to pay a fee) without a referendum by the recipients authorizing such action.

Since that determination, the Magnuson-Stevens Act has been amended to include a Fishing Capacity Reduction Program, that specifically authorizes the development of a license buyback program. A buyback program for crab licenses currently is being developed by a crab industry organization for consideration by the Council.

*Comment 17:* Limiting the use of the unavoidable circumstances provision to a person whose eligibility is based on a vessel, or its replacement, whose documented harvest before June 15, 1995, was unavailable after that vessel was lost, damaged, or otherwise unable to participate in a qualifying fishery, is unfair to a person who could have used the provision except that he or she did not have a documented harvest before prior to June 17, 1995.

*Response:* Based on the approved recommendation of the Council, NMFS narrowly crafted the unavoidable-circumstances provision to grant eligibility only when the minimum requirements for eligibility under the EQP would have been met except that circumstances beyond the control of the owner of the vessel at that time prevented that vessel from meeting those requirements. However, the unavoidable-circumstances provision was never intended to extend the EQP. Unless a person can demonstrate his or her intent to remain an active participant in the groundfish fisheries through a documented harvest made from a vessel, or its replacement, and submitted after that vessel was lost, damaged, or unable to participate but before June 17, 1995, that person cannot use the unavoidable-circumstances provision. A harvest before June 17, 1995, indicated a participant's good faith effort to remain in the groundfish fisheries. This requirement is not unfair because any participation after June 17, 1995, the date of final Council action, is not considered a qualifying harvest under the LLP.

*Comment 18:* The Council indicated that a person who would not qualify because he or she deployed a vessel from which documented harvests were made during the GQP and the EQP in different management areas would receive a license with an area endorsement for the area in which that person had met the minimum requirements during the EQP. However, a provision to allow this method of

eligibility was not in the FMP language. How will this issue be addressed?

*Response:* The record shows that the Council did indicate that this method of eligibility would be allowed. Section 679.4(i)(4)(iv) and (v) provides for this method of eligibility. These provisions implement the Council's FMP amendments on this issue.

*Comment 19:* NMFS should consider reducing the amount of pollock available for harvest in the North Pacific.

*Response:* Harvest reduction is beyond the scope of the LLP analysis; however, this comment would be appropriate for the specifications process, a process during which the allowable biological catch and the TAC for each species is determined.

*Comment 20:* The LLP does not solve the race for fish. The race for fish contributes to safety hazards of fishing; therefore, the LLP does not meet the requirements of national standard 10.

*Response:* National standard 10 requires conservation and management measures, to the extent practicable, to promote the safety of human life at sea. The U.S. Coast Guard reviewed the LLP and determined that all safety concerns had been adequately addressed. No management program can totally eliminate the inherent risks of fishing. Fishing vessel operators, as they have been throughout history, will be faced with the many inherent risks of earning a living at sea. The LLP will not increase that peril.

*Comment 21:* Is a person that owns a vessel that was "grandfathered" under the provisions of Chapter 121, Title 46, U.S.C., included in the definition of "qualified person?"

*Response:* Research of the record, Council transcripts, and the EA/RIR, indicate that the Council intended to include a person that owned a vessel that was "grandfathered" under the provisions of Chapter 121, Title 46, U.S.C., in the definition of "qualified person." Such a person would need to demonstrate that his or her vessel was eligible to be documented as a fishing vessel under the "grandfather" provision of Chapter 121, Title 46, U.S.C., to be found eligible for a license under the LLP.

#### Classification

The Administrator, Alaska Region, NMFS, (Regional Administrator) determined that the FMP Amendments 39, 41, and 5 are necessary for the conservation and management of the groundfish fisheries of the EEZ off Alaska and the crab fisheries of the BSAI. The Regional Administrator also determined that these amendments are

consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. NMFS received four comments concerning that certification; however, these comments were directed at the CDQ portion of the proposed rule and are summarized and responded to in the separate final rule action (63 FR 8356, February 19,

1998). These comments did not cause NMFS to change its determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648-0334. The public reporting burden for these requirements is estimated to be two hours for a permit application and one hour for a permit transfer application. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 24, 1998.

Andrew A. Rosenberg,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, paragraph (j) is added to read as follows:

#### § 679.1 Purpose and scope.

\* \* \* \* \*

(j) *License Limitation Program.* (1) Regulations in this part implement the license limitation program for the commercial groundfish fisheries in the EEZ off Alaska and for the commercial crab fisheries in the Bering Sea and Aleutian Islands Area.

(2) Regulations in this part govern the commercial fishing for license limitation groundfish by vessels of the United States using authorized gear within the GOA and the BSAI and the commercial fishing for crab species by vessels of the United States using authorized gear within the Bering Sea and Aleutian Islands Area.

3. In § 679.2, the definitions for "Legal Landing", "Maximum LOA", "Processing or to process", and "Qualified Person", are revised; and definitions for "Area Endorsement", "Area/Species Endorsement", "Catcher/Processor Vessel Designation", "Catcher Vessel Designation", "Crab Species", "Crab Species License", paragraph (3) for "Directed Fishing", "Documented Harvest", "Eligible Applicant", "Groundfish License", "License Holder", "License Limitation Groundfish", "State", and "Vessel Length Category" are added in alphabetical order to read as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Area endorsement* means a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the designated area, subarea, or district. Area endorsements, which are inclusive of, but not necessarily the same as, management areas, subareas, or districts defined in this part, are as follows:

(1) Aleutian Islands area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Aleutian Islands Subarea;

(2) Bering Sea area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Bering Sea Subarea;

(3) Central Gulf area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Central Area of the Gulf of Alaska and the West Yakutat District;

(4) Southeast Outside area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Southeast Outside District; and

(5) Western Gulf area endorsement. Authorizes the license holder to deploy a vessel to conduct directed fishing for license limitation groundfish in the Western Area of the Gulf of Alaska.

*Area/species endorsement* means a designation on a license that authorizes a license holder to deploy a vessel to conduct directed fishing for the designated crab species in Federal waters in the designated area. Area/species endorsements for crab species licenses are as follows:

(1) Aleutian Islands brown king in waters with an eastern boundary the longitude of Scotch Cap Light (164° 44' W. long.), a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of a line from the latitude of Cape Sarichef (54° 36' N. lat.) westward to 171° W. long., then north to 55° 30' N. lat., then west to the U.S.-Russian Convention line of 1867.

(2) Aleutian Islands red king in waters with an eastern boundary the longitude of Scotch Cap Light (164° 44' W. long.), a western boundary of the U.S.-Russian Convention Line of 1867, and a northern boundary of a line from the latitude of Cape Sarichef (54° 36' N. lat.) westward to 171° W. long., then north to 55° 30' N. lat., and then west to the U.S.-Russian Convention line of 1867.

(3) Bristol Bay red king in waters with a northern boundary of 58° 39' N. lat., a southern boundary of 54° 36' N. lat., and a western boundary of 168° W. long. and including all waters of Bristol Bay.

(4) Bering Sea and Aleutian Islands Area *C. opilio* and *C. bairdi* in Pacific Ocean and Bering Sea waters east of the U.S.-Russian Convention Line of 1867, excluding all Pacific Ocean waters east of a boundary line extending south (180°) from Scotch Cap Light.

(5) Norton Sound red king and Norton Sound blue king in waters with a western boundary of 168° W. long., a southern boundary of 61° 49' N. lat., and a northern boundary of 65° 36' N. lat.

(6) Pribilof red king and Pribilof blue king in waters with a northern boundary of 58° 39' N. lat., an eastern boundary of 168° W. long., a southern boundary line from 54° 36' N. lat., 168° W. long., to 54° 36' N. lat., 171° W. long., to 55° 30' N. lat., 171° W. long., to 55° 30' N.



lat., 173° 30' E. lat., and then westward to the U.S.-Russian Convention line of 1867.

(7) St. Matthew blue king in waters with a northern boundary of 61° 49' N. lat., a southern boundary of 58° 39' N. lat., and a western boundary of the U.S.-Russian Convention line of 1867.

*Catcher/processor vessel designation* means, for purposes of the license limitation program, a license designation that authorizes the license holder:

(1) Designated on a groundfish license to deploy a vessel to conduct directed fishing for license limitation groundfish and process license limitation groundfish on that vessel or to conduct only directed fishing for license limitation groundfish; or

(2) Designated on a crab species license to deploy a vessel to conduct directed fishing for crab species and process crab species on that vessel or to conduct only directed fishing for crab species.

*Catcher vessel designation* means, for purposes of the license limitation program, a license designation that authorizes the license holder:

(1) Designated on a groundfish license to deploy a vessel to conduct directed fishing for, but not process, license limitation groundfish on that vessel; or

(2) Designated on a crab species license to deploy a vessel to conduct directed fishing for, but not process, crab species on that vessel.

*Crab species* means all crab species covered by the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/ Aleutian Islands, including, but not limited to, red king crab (*Paralithodes camtschatica*), blue king crab (*Paralithodes platypus*), brown or golden king crab (*Lithodes aequispina*), scarlet or deep sea king crab (*Lithodes couesi*), Tanner or bairdi crab (*Chionoecetes bairdi*), opilio or snow crab (*Chionoecetes opilio*), grooved Tanner crab (*Chionoecetes tanneri*), and triangle Tanner crab (*Chionoecetes angulatus*).

*Crab species license* means a license issued by NMFS that authorizes the license holder designated on the license to deploy a vessel to conduct directed fishing for crab species.

*Directed fishing* means:

(3) With respect to license limitation groundfish species, directed fishing as defined in paragraph (1) of this definition, or, with respect to license limitation crab species, the catching and

retaining of any license limitation crab species.

*Documented harvest* means a lawful harvest that was recorded in compliance with Federal and state commercial fishing regulations in effect at the time of harvesting.

*Eligible applicant* means a qualified person who submitted an application during the application period announced by NMFS and:

(1) Who owned a vessel on June 17, 1995, from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(i)(4) and (i)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) To whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(i)(4) and (i)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; or

(3) Who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(i)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(i)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

(4) Who is an individual that can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794(a).

*Groundfish license* means a license issued by NMFS that authorizes the license holder designated on the license to deploy a vessel to conduct directed fishing for license limitation groundfish.

*Legal landing* means a landing in compliance with Federal and state commercial fishing regulations in effect at the time of landing.

*License holder* means the person who is named on a currently valid

groundfish license or crab species license.

*License limitation groundfish* means target species and the "other species" category, specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude and sablefish managed under the IFQ program are not considered license limitation groundfish.

*Maximum LOA (MLOA)* means:

(1) Applicable through December 31, 1998, with respect to a vessel's eligibility for a moratorium permit:

(i) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is less than 125 ft (38.1 m) LOA, 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less.

(ii) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is equal to or greater than 125 ft (38.1 m), the original qualifying LOA.

(iii) For an original qualifying vessel under reconstruction on June 24, 1992, the LOA on the date reconstruction was completed, provided that maximum LOA is certified under § 679.4(c)(9).

(2) With respect to the license limitation program, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. However, if the vessel was under reconstruction on June 24, 1992, then the basis for the MLOA will be the LOA of the vessel on the date that reconstruction was completed and not June 24, 1992. The following exceptions apply regardless of how the MLOA was determined.

(i) If the vessel's LOA on June 17, 1995, was less than 60 ft (18.3 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was less than 60 ft (18.3 m), then the vessel's MLOA cannot exceed 59 ft (18 m).

(ii) If the vessel's LOA on June 17, 1995, was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), then the vessel's MLOA cannot exceed 124 ft (37.8 m).

(iii) If the vessel's LOA on June 17, 1995, was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on June 17, 1995, or if the vessel was under reconstruction on June 17,

1995, and the vessel's LOA on the date that reconstruction was completed was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on the date reconstruction was completed.

\* \* \* \* \*

*Processing, or to process*, means the preparation of, or to prepare, fish or crab to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, or rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

\* \* \* \* \*

*Qualified Person* means:

(1) With respect to the IFQ program, see IFQ Management Measures at § 679.40(a)(2).

(2) With respect to the license limitation program, a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

\* \* \* \* \*

*State* means the State of Alaska.

\* \* \* \* \*

*Vessel length category* means the length category of a vessel, based on the assigned MLOA, used to determine eligibility.

\* \* \* \* \*

4. In § 679.4, paragraphs (a)(6) and (k) are added to read as follows:

**§ 679.4 Permits.**

(a) \* \* \*

(6) *Harvesting privilege*. Quota shares, permits, or licenses issued pursuant to this part are neither a right to the resource nor any interest that is subject to the "takings" provision of the Fifth Amendment to the U.S. Constitution. Rather, such quota shares, permits, or licenses represent only a harvesting privilege that may be revoked or amended subject to the requirements of the Magnuson-Stevens Act and other applicable law.

\* \* \* \* \*

(i) *Licenses for license limitation groundfish or crab species*—(1) *General requirements*. (i) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (i)(2) of this section, each vessel within the GOA or the BSAI must have a groundfish license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish only in the specific area(s) designated on the

license and may only be used on a vessel that complies with the vessel designation and MLOA specified on the license.

(ii) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (i)(2) of this section, each vessel within the Bering Sea and Aleutian Islands Area must have a crab species license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for crab species. This crab species license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for crab species only for the specific species and in the specific area(s) designated on the license, and may be used only on a vessel that complies with the vessel designation and MLOA specified on the license.

(2) *Exempt vessels*. Notwithstanding the requirements of paragraph (i)(1) of this section,

(i) A catcher vessel or catcher/processor vessel that does not exceed 26 ft (7.9 m) LOA may conduct directed fishing for license limitation groundfish in the GOA without a groundfish license;

(ii) A catcher vessel or catcher/processor vessel that does not exceed 32 ft (9.8 m) LOA may conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license and may conduct directed fishing for crab species in the Bering Sea and Aleutian Islands Area without a crab species license;

(iii) A catcher vessel or catcher/processor vessel that does not exceed 60 ft (18.3 m) LOA may use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line, to conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license; or

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and that was, after November 18, 1992, specifically constructed for and used exclusively in accordance with a CDP approved by NMFS under Subpart C of this part, and is designed and equipped to meet specific needs that are described in the CDP may conduct directed fishing for license limitation groundfish in the GOA and in the BSAI area without a groundfish license and for crab species in the Bering Sea and Aleutian Islands Area without a crab species license.

(3) *Vessel designations and vessel length categories*—(i) *General*. A license can be used only on a vessel that complies with the vessel designation specified on the license and that has an

LOA less than or equal to the MLOA specified on the license.

(ii) *Vessel designations*—(A) *Catcher/processor vessel*. A license will be assigned a catcher/processor vessel designation if:

(1) For license limitation groundfish, license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (i)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (i)(4)(ii) of this section; or

(2) For crab species, crab species were processed on the vessel that qualified for the crab species license under paragraph (i)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (i)(5)(ii) of this section.

(3) For purposes of paragraphs (i)(3)(ii)(A)(1) and (i)(3)(ii)(A)(2) of this section, evidence of processing must be demonstrated by Weekly Production Reports or other valid documentation demonstrating that processing occurred on the vessel during the relevant period.

(B) *Catcher vessel*. A license will be assigned a catcher vessel designation if it does not meet the criteria in paragraph (i)(3)(ii)(A)(1) or (i)(3)(ii)(A)(2) of this section to be assigned a catcher/processor vessel designation.

(C) *Changing a vessel designation*. A person who holds a groundfish license or a crab species license with a catcher/processor vessel designation may, upon request to the Regional Administrator, have the license reissued with a catcher vessel designation. The vessel designation change to a catcher vessel will be permanent, and that license will be valid for only those activities specified in the definition of catcher vessel designation at § 679.2.

(iii) *Vessel length categories*. A vessel's eligibility will be determined using the following three vessel length categories, which are based on the vessel's LOA on June 17, 1995, or, if the vessel was under reconstruction on June 17, 1995, the vessel's length on the date that reconstruction was completed.

(A) Vessel length category "A" if the LOA of the qualifying vessel on the relevant date was equal to or greater than 125 ft (38.1 m) LOA.

(B) Vessel length category "B" if the LOA of the qualifying vessel on the relevant date was equal to or greater than 60 ft (18.3 m) but less than 125 ft (38.1 m) LOA.

(C) Vessel length category "C" if the LOA of the qualifying vessel on the relevant date was less than 60 ft (18.3 m) LOA.

(4) *Qualifications for a groundfish license.* A groundfish license will be issued to an eligible applicant that meets the criteria in paragraphs (i)(4)(i) and (i)(4)(ii) of this section. For purposes of the license limitation program, evidence of a documented harvest must be demonstrated by a state catch report, a Federal catch report, or other valid documentation that indicates the amount of license limitation groundfish harvested, the groundfish reporting area in which the license limitation groundfish was harvested, the vessel and gear type used to harvest the license limitation groundfish, and the date of harvesting, landing, or reporting. State catch reports are Alaska, California, Oregon, or Washington fish tickets. Federal catch reports are Weekly Production Reports required under § 679.5.

(i) *General qualification periods (GQP).* (A) At least one documented harvest of any amount of license limitation groundfish species must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (i)(4)(ii)(A) and (i)(4)(ii)(B) of this section. This documented harvest must have been of license limitation groundfish species caught and retained in the BSAI or in the State waters shoreward of the BSAI and must have occurred during the following periods:

(1) January 1, 1988, through June 27, 1992;

(2) January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) January 1, 1988, through June 17, 1995, provided that the vessel qualified for a gear endorsement under the Vessel Moratorium based on criteria specified at § 679.4(c)(5)(ii)(B) or § 679.4(c)(5)(iv)(B).

(B) At least one documented harvest of any amount of license limitation groundfish species must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (i)(4)(ii)(C) through (i)(4)(ii)(E) of this section. This documented harvest must have been of fish caught and retained in the GOA or in the State waters shoreward of the GOA and must have occurred during the following periods:

(1) January 1, 1988, through June 27, 1992;

(2) January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using

pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) January 1, 1988, through June 17, 1995, provided that the vessel qualified for a gear endorsement under the Vessel Moratorium based on criteria specified at § 679.4(c)(5)(ii)(B) or § 679.4(c)(5)(iv)(B).

(ii) *Endorsement qualification periods (EQP).* A groundfish license will be assigned one or more area endorsements based on the criteria in paragraphs (i)(4)(ii)(A) through (i)(4)(ii)(E) of this section.

(A) *Aleutian Islands area endorsement.* For a license to be assigned an Aleutian Islands endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel categories "A" through "C") between January 1, 1992, and June 17, 1995, and in the Aleutian Islands Subarea or in State waters shoreward of that subarea.

(B) *Bering Sea area endorsement.* For a license to be assigned a Bering Sea area endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel categories "A" through "C") between January 1, 1992, and June 17, 1995, and in the Bering Sea Subarea or in State waters shoreward of that subarea.

(C) *Western Gulf area endorsement—*  
(1) *Vessel length category "A".* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(2) *Vessel length category "B" and catcher vessel designation.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "B" and that would qualify for a catcher vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(3) *Vessel length category "B" and catcher/processor vessel designation.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel

length category "B" and that would qualify for a catcher/processor vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area, or at least four documented harvests of any amount of license limitation groundfish harvested from January 1, 1995, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(4) *Vessel length category "C".* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(D) *Central Gulf area endorsement—*  
(1) *Vessel length category "A".* For a license to be assigned a Central Gulf area endorsement based on the participation of a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(2) *Vessel length category "B".* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category "B", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four documented harvests from January 1, 1995, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(3) *Vessel length category "C".* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel

length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(E) *Southeast Outside area endorsement*—(1) *Vessel length category "A"*. For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Southeast Outside District or in State waters shoreward of that district.

(2) *Vessel length category "B"*. For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category "B", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four documented harvests from January 1, 1995, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Southeast Outside District or in State waters shoreward of that district.

(3) *Vessel length category "C"*. For a license to be assigned a Southeast outside area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Southeast Outside District or in State waters shoreward of that district.

(iii) An eligible applicant that is issued a groundfish license based on a vessel's qualifications under paragraph (i)(4)(i)(A)(2) or (i)(4)(i)(B)(2) of this section must choose only one area endorsement for that groundfish license even if the vessel qualifies for more than one area endorsement.

(iv) Notwithstanding the provisions in paragraph (i)(4) of this section, a license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements of paragraph (i)(4)(i)(A), and the

requirements of paragraph (i)(4)(ii)(C), (i)(4)(ii)(D), or (i)(4)(ii)(E) of this section, but

(A) From whose vessel no documented harvests were made in the GOA or state waters shoreward of the GOA between January 1, 1988, and June 27, 1992, and

(B) From whose vessel no documented harvests were made in the BSAI or state waters shoreward of the BSAI between January 1, 1992, and June 17, 1995.

(v) Notwithstanding the provisions of paragraph (i)(4) of this section, a license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements of paragraph (i)(4)(i)(B) of this section, and the requirements of paragraph (i)(4)(ii)(A) or (i)(4)(ii)(B) of this section, but

(A) From whose vessel no documented harvests were made in the BSAI or state waters shoreward of the BSAI between January 1, 1988, and June 27, 1992, and

(B) From whose vessel no documented harvests were made in the GOA or state waters shoreward of the GOA between January 1, 1992, and June 17, 1995.

(5) *Qualifications for a crab species license*. A crab species license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (i)(5)(i) and (i)(5)(ii) of this section, except that vessels are exempt from the requirements in paragraph (i)(5)(i) of this section for the area/species endorsements in paragraph (i)(5)(ii)(A) and (i)(5)(ii)(G) of this section.

(i) *General qualification period (GQP)*. To qualify for one or more of the area/species endorsements in paragraph (i)(5)(ii) of this section:

(A) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and June 27, 1992; or

(B) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and December 31, 1994, providing that the vessel from which the documented harvest was made qualified for a gear endorsement under the Vessel Moratorium based on criteria specified at § 679.4(c)(5)(i)(B).

(ii) *Area/Species Endorsements*. A crab species license will be assigned one or more area/species endorsements specified at § 679.2 based on the criteria in paragraphs (i)(5)(ii)(A) through (C) of this section.

(A) *Pribilof red king and Pribilof blue king*. At least one documented harvest of any amount of red king or blue king

crab harvested in the area described in the definition for the Pribilof red king and Pribilof blue king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1993, and December 31, 1994, to qualify for a Pribilof red king and Pribilof blue king area/species endorsement.

(B) *Bering Sea and Aleutian Islands Area C. opilio and C. bairdi*. At least three documented harvests of any amount of *C. opilio* or *C. bairdi* crab harvested in the area described in the definition for the Bering Sea and Aleutian Islands Area *C. opilio* or *C. bairdi* area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a *C. opilio* and *C. bairdi* area/species endorsement.

(C) *St. Matthew blue king*. At least one documented harvest of any amount of blue king crab harvested in the area described in the definition for the St. Matthews blue king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a St. Matthew blue king area/species endorsement.

(D) *Aleutian Islands brown king*. At least three documented harvests of any amount of brown king crab harvested in the area described in the definition for the Aleutian Islands brown king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a Aleutian Islands brown king area/species endorsement.

(E) *Aleutian Islands red king*. At least one documented harvest of any amount of red king crab harvested in the area described in the definition for the Aleutian Islands red king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a Aleutian Islands red king area/species endorsement.

(F) *Bristol Bay red king*. At least one documented harvest of any amount of red king crab harvested in the area described in the definition for the Bristol Bay red king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1991, and December 31, 1994, to qualify for a Bristol Bay red king area/species endorsement.

(G) *Norton Sound red king and Norton Sound blue king*. At least one documented harvest of any amount of red king or blue king crab harvested in the area described in the definition for the Norton Sound red king and Norton Sound blue king area/species endorsement in § 679.2 must have been

made from a vessel between January 1, 1993, and December 31, 1994, to qualify for a Norton Sound red king and Norton Sound blue king area/species endorsement.

(6) *Application for a groundfish license or a crab species license.* [Reserved].

(7) *Transfers.* [Reserved].

(8) *Other provisions.* (i) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Fishery Conservation and Management Act or any regulations issued pursuant thereto, is subject to the civil and criminal penalty provisions and the civil forfeiture provisions of the Magnuson-Stevens Fishery Conservation and Management Act, part 621 of this chapter, 15 CFR part 904 (Civil Procedure), and other applicable law. Penalties include, but are not limited to, permanent or temporary sanctions to licenses.

(ii) Notwithstanding the provisions of the license limitation program in this part, vessels fishing for species other than license limitation groundfish as defined in § 679.2 that were authorized under Federal regulations to incidentally catch license limitation groundfish without a Federal fisheries permit described at § 679.4(b) will continue to be authorized to catch the maximum retainable bycatch amounts of license limitation groundfish as provided in this part without a groundfish license.

(iii) An eligible applicant, who qualifies for a groundfish license or crab species license but whose vessel on which the eligible applicant's qualification was based was lost or destroyed, will be issued a license. This license:

(A) Will have the vessel designation of the lost or destroyed vessel.

(B) Cannot be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species on a vessel that has an LOA greater than the MLOA designated on the license.

(iv) A qualified person who owned a vessel on June 17, 1995, that made a documented harvest of license limitation groundfish, or crab species if applicable, between January 1, 1988, and February 9, 1992, but whose vessel was unable to meet all the criteria in paragraph (i)(4) of this section for a groundfish license or paragraph (i)(5) of this section for a crab species license because of an unavoidable circumstance (i.e., the vessel was lost, damaged, or otherwise unable to participate in the

license limitation groundfish or crab fisheries) may receive a license if the qualified person is able to demonstrate that:

(A) The owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel during a specific time period in a specific area.

(B) The specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel was thwarted by a circumstance that was:

(1) Unavoidable.

(2) Unique to the owner of that vessel, or unique to that vessel.

(3) Unforeseen and reasonably unforeseeable to the owner of the vessel.

(C) The circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species actually occurred.

(D) Under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species.

(E) Any amount of license limitation groundfish or appropriate crab species was harvested on the vessel in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person who owned a vessel on June 17, 1995, is applying and that the license limitation groundfish or crab species was harvested after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

(v) A groundfish license or a crab species license may be used on a vessel that complies with the vessel designation on the license and that does not exceed the MLOA on the license.

5. In § 679.7, paragraph (i) is added to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(j) *License Limitation Program—(1) Number of licenses.* (i) Hold more than 10 groundfish licenses in the name of that person at any time, except as provided in paragraph (j)(1)(iii) of this section;

(ii) Hold more than five crab species licenses in the name of that person at any time, except as provided in paragraph (j)(1)(iii) of this section; or

(iii) Hold more licenses than allowed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section unless those licenses were

issued to that person in the initial distribution of licenses. Any person who receives in the initial distribution more licenses than allowed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section shall have no transfer applications for receipt of additional licenses approved until the number of licenses in the name of that person is less than the numbers specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this section; furthermore, when a person becomes eligible to receive licenses by transfer through the provisions of this paragraph, that person is subject to the provisions in paragraphs (j)(1)(i) and (j)(1)(ii) of this section;

(2) Conduct directed fishing for license limitation groundfish without an original valid groundfish license, except as provided in § 679.4(i)(2);

(3) Conduct directed fishing for crab species without an original valid crab species license, except as provided in § 679.4(i)(2);

(4) Process license limitation groundfish on board a vessel without an original valid groundfish license with a Catcher/processor designation;

(5) Process crab species on board a vessel without an original valid crab species license with a Catcher/processor designation;

(6) Use a license on a vessel that has an LOA that exceeds the MLOA specified on the license;

(7) Lease a groundfish or crab species license.

6. In § 679.43, a new paragraph (p) is added to read as follows:

**§ 679.43 Determinations and appeals.**

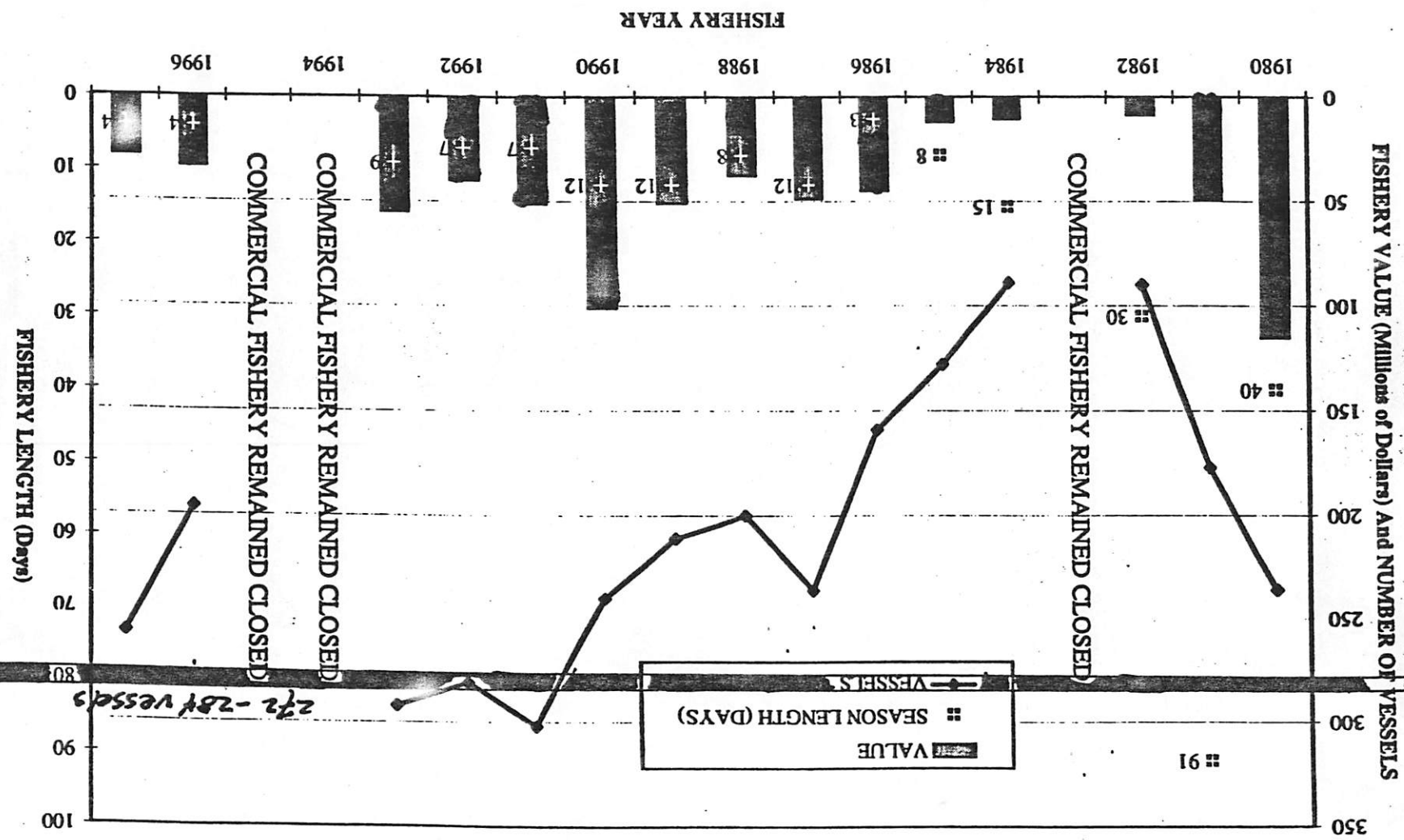
\* \* \* \* \*

(p) *Issuance of a non-transferable license.* A non-transferable license will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license for license limitation groundfish or crab species under § 679.4(i). This non-transferable license authorizes a person to conduct directed fishing for groundfish or directed fishing for crab species and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable license expires upon the resolution of the appeal.

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BILLING CODE 3510-22-F

RESULTS OF THE NDFMC'S CRAB LCP "recent participation" VOTE ..

Figure 5-3. Economic performance of the Bristol Bay red king crab fishery in terms of vessel effort, season length (days), and total fishery value, 1980 - 1997.



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"After this vote, there are 'LATENT' CRAB PERMITS." DENNIS AUSTIN, WDFW 10.9.98