

Transcription
NPFMC Discussion on License Limitation
October 1, 1995

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

Tape 52

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

Linda Behnken: Second.

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

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

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

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

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

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

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

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

Benton: That's true.

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

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

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

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

Lauber: Any further discussion?

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

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

Hartley: Right, that's correct.

Lauber: What happens one way or the other.

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

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

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

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

Clem Tillion: No, no, no.

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

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

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

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

Benton: That's correct.

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

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

Tillion: The new owner of the vessel.

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

Hartley: Yes.

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

Tillion: Yes.

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

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

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

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

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

Lauber: Yes. And until the matter is resolved.

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

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

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

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

Tillion: If there's an argument.

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

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

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

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

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

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

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

Lauber: That's right.

Tillion: Very good.

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

Benton: No, you're wrong Marcus.

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

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

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

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

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

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

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

Pereyra: True, true.

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

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

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

Tillion: Does Marcus have it down?

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

Tillion: Yes. But before that...

Hartley: Before that go to the buyer.

Tillion: O.K.

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

Hartley: The unspecified transfers.

Tillion: The unspecified goes with the vessel.

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

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

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

Behnken: Only if it's written.

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

O'Leary: Alright, I understand.

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

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

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

Tillion: They don't get two licenses.

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

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

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

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

Benton: Yeah, we can do that.

Behnken: I thought it was part of this.

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

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

O'Leary: I'll second it.

Behnken: I'll second it.

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

Lauber: Is there any further discussion on the motion?

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

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

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

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

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

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

Benton: That's 1992?

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

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

Hartley: Right. Absolutely. Absolutely.

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

Tillion: No, that's not the problem.

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

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

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

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

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

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

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

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

Tillion: That's no problem.

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

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

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

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

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

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

Hartley: Right.

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

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

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

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

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

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

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

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

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

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

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

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

Lauber: O.K. I want to make sure that the staff...in some ways is asking for clarification here, and I'm not sure that we've given it to you on this, Marcus.

Hartley: I think I...you're going to honor those retained rights.

Lauber: That's my understanding, yes.

Hartley: And basically, it means that you've severed the fish histories, and in the sense, there's two fishing histories that may qualify.

Lauber: That's my understanding.

Hartley: O.K. I'm completely on board with...

Pennoyer: And therefore, potentially two vessels.

Hartley: And therefore, potentially two licenses.

Pennoyer: It's not one license, one vessel, one license.

Lauber: Now when we get to this other issue, which I believe is what Mr. Benton really was driving at with his motion, the one license, one vessel. Were you more dealing with this, as you saw it, the under 60 feet, which may be involved with larger vessels, but we'll have to explore that. Is that what you were referring to?

Benton: That was what I was driving at, Mr. Chairman, yes.

Lauber: So, now to...can you explain to us how that differs, and what we're talking about here. It wasn't apparently exactly the same issue, was it?

Benton: Well, as I understand it, you'd have under the under 60 foot vessel category, for example, and staff help me out here if I've got your example wrong, but my understanding is is that then you have a vessel that meets all those qualifications, it transfers on 1/1/95 with retained rights. So the person that was fishing that vessel prior to 1/1/95, so in 1994 or previously, they kept those rights and they met all the qualifications. And this is germane to the under 60 foot category because of the extension of the GQP. Then in that instance, that buyer winds up with the full suite of rights again. So in essence, you have one vessel and two sets of rights, and then it becomes sort of a difficult situation. And that's the one instance that I could see where it was a problem.

Hartley: And I apologize there, Mr. Chairman. The license in that very situation that would go to fisher Y is one of those very limited, one FMP area licenses, and in fact, there's no moratorium qualifying rights at all there. And so I think we've captured the...they don't get the full suite. They get that one area license. And I'm sorry I used that, perhaps, sloppy example. I didn't want to get out too unbelievable, and that seemed fairly believable, and I apologize.

Lauber: O.K. Does that resolve this issue? Yes, John.

Lepore: Mr. Chairman, if I could go over what this motion was and see if my understanding is clear. Would that be fine?

Lauber: O.K. Let's do that. Want to make sure.

Lepore: O.K. Before 6/17/95, we would recognize the transfer of rights if there were no dispute. If there is a dispute, no license would be issued until that dispute is resolved. And the default is that the rights go with the vessel unless there was some type of agreement. After 6/17/95, must have a written agreement for the license to go to someone other than the owner of the vessel on 6/17/95. Is that reflective of the motion?

Tillion: That's it.

Lauber: That's what we passed before.

Benton: That's essentially what we've been saying.

Pautzke: That's not this one though.

Lauber: Well, but that's alright. We still want it clarified. He's the one that's got to do it. Now do you have the other issue, is that resolved also to your satisfaction? The last one we've talked to. O.K. Alright, do we move now to the next one, lost vessel treatment. Is that...

Pautzke: We just assume you voted on that motion of the sense of the Council, so now we move on to the loss treatment, right?

O'Leary: What's the AP say about that?

Pautzke: The AP recommended there be no additional special exemptions be made for lost vessels, and the motion carried 16-1-1. Is there some clarification from the staff you need to give us? Darrell?

Darrell Brannan: No, Mr. Chairman, would you like me to walk through that issue real briefly for you once again? You'll notice that on that handout, the lost vessel, this portion of that treatment was the vessels that could still qualify for the moratorium by making a landing within two years of the implementation date of the moratorium, either 1996 or 1997, and still qualify for the moratorium, but they wouldn't be allowed to earn license endorsements later than the 6/17/95 cutoff date. So basically they could still qualify for the moratorium, but they'd be out of the license limitation program. The minimum landings part of this discussion will come under option 5, under further Council discussion, and we'll get to that one later.

Lauber: O.K. What's your pleasure? Follow the AP recommendation? Or does somebody have another suggestion?

Benton: Mr. Chairman, I think that we generally are going to...I would support sticking with the AP's recommendation. I believe that at the June meeting the Council had an extensive discussion about hardship cases and about lost vessels and replacement of lost vessels, or other hardships that might occur. I distinctly remember, I think it was Mr. Pereyra, bringing up the issue of a, you know, catastrophic engine failure, and Dr. Collinsworth saying in his opinion, any engine failure was catastrophic. And I remember that discussion fairly well. And item number 8 sort of speaks to that...that's in the general provisions, speaks to that on hardships. And then also when we dealt with vessel replacements and upgrades, I think we also had quite a discussion about what happens with lost vessels. And I believe that the Council had a recognition that under the moratorium, that this was...that there was somewhat of a period where this could go forward, but that there was an interest on the part of the Council, at least that's my recollection, that it was time to say, O.K. again here is a bright line. And when you look at it and think about it a bit, it does make some sense, in that the right to bring a vessel back into the fishery under the moratorium was to give that vessel the opportunity to participate under the moratorium and continue fishing. And when you look at the license program, I think the license program, when we were debating it, it was pretty clear and on the record, in my mind anyway, that we decided there had been a lot of time gone by since the moratorium was first adopted by the Council, people were certainly on notice that they needed to get going with the process with replacing or salvaging a vessel, and that it was time to just say here's the rules. But that's my recollection.

Lauber: O.K. Any further discussion? I don't know if that was a motion or what, but...

Benton: I can make it one if it's necessary.

Pautzke: The AP recommendation? Is that what it is?

Lauber: The AP recommendation, no special treatment.

Benton: I move we adopt the AP recommendation.

Behnken: Second.

Lauber: Any further discussion on that? Is there any objection to the motion of adopting the AP recommendation on lost vessels?

Benton: Mr. Chairman, if I could have one more comment on that matter. I would just point out that those vessels still could be, in the intervening period, could still be brought back under the rules of the moratorium. Until this license program is adopted, they could be operated. The owners could of course purchase endorsements and operate those vessels if they wanted to, under the license program. They're not precluded from operating in the fishery. It doesn't mean that they've totally lost the value of those vessels, but it does mean that they would be subsequently required to get a license, I would assume, after the license program was adopted.

Lauber: Is there any further discussion? Any objection to the motion? Hearing none, it passes. O.K. Treatment of crossovers.

Benton: Before we move on, I just want to, you know, there are some differences between issues raised in the staff's memorandum, and in Mr. Pennoyer's letter. But they're sort of in the same general categories, and I guess I am interested in hearing whether or not, as we go through these, there are additional issues raised in Mr. Pennoyer's letter under these headings that we have not dealt with that need to be talked about and addressed.

Pennoyer: Mr. Chairman, that's fair, and that's why John joined the staff at the table. Not assuming they weren't going to do an excellent job, but in fact that any of these issues that overlap have additional clarification required, John will bring it up as we go along. My assumption is, in these first ones we don't.

Lauber: Did what we just did have anything to do with number five in the next thing?

Lepore: Mr. Chairman, yes it does. It's a slightly separate issue. It doesn't have to do with the moratorium situation, it has to do with the relaxation of landing requirements under provision eight.

Lauber: So you'll explain that to us when we get to that. What the little difference is.

Benton: And you have that under hardship?

Lepore: That is correct, yes sir.

Lauber: Now shall we move to speaking to the crossovers, number three.

Oliver: Marcus is going to put up...

Lauber: Is this going to take awhile? Why don't we take a break.

Lauber: O.K. We are on license limitation issues, and number three, treatment of crossovers, particularly Bering Sea/Aleutian Islands crab vessels. Staff have any presentation here for us? I see the screen's up there.

Oliver: I could quickly recap the issue and the question, Mr. Chairman. Basically, when the Council passed their program in June, you gave us a couple of criteria for defining how a vessel could earn endorsements. For example, a vessel to earn groundfish endorsements in a given FMP area, you indicated that that vessel would have had to have also fished that particular FMP area in the base period, as well as the endorsement period. And that situation is captured in the last two rows of the table. The last row, for example, a vessel that fished Gulf groundfish in the base period, fished both areas in the endorsement period, would only receive the endorsements for the Gulf. At the same time, you gave us...you also wanted to recognize moratorium crossovers. So when we got back to the office, we were in a dilemma as to how to treat vessels that fished only Bering Sea crab in the base period, then fished groundfish in both Bering Sea and Gulf in the endorsement period, which of the rules should be give precedence? The one that recognizes full crossovers, or for example, should we apply the same standard

that you had to have fished an area in the base period to earn groundfish endorsements in the base period. So that was our dilemma, should we give those Bering Sea crab vessels their full suite of endorsements in both the Gulf and the Bering Sea, or should they be limited to receiving only the Bering Sea endorsements. An alternative way to look at this issue, and I think it's the way the AP did, was to go back and revisit how you treated the groundfish vessels, in terms of giving...whether or not to give them their full suite of endorsements in both areas. And so there's two different ways you could get at the issue. But again, we just need some direction on how to treat that issue.

Behnken: Mr. Chairman, in looking at the memo from the staff, my recommendation, and I'll make it in the form of a motion, for at least the first part of this issue, would be that we use the alternative they suggested at number one, [change to tape 54] which would require the 23 BSAI crabbers who crossed over in both the BSAI and GOA to relinquish their GOA endorsements and receive only a Bering Sea license...or Bering Sea/Aleutian Island. If I have a second, I'll give my reasons.

O'Leary: I'll second it.

Behnken: My reasons are, the crossover provision was to allow some of these Bering Sea/Aleutian Island crabbers to enter into the groundfish fisheries. And we made that for some very specific reasons under the moratorium. I don't think we ever intended to allow additional vessels into the Gulf of Alaska, and it seems to me that alternative number one that the staff's put forward to us is consistent with what we did under the moratorium.

Pennoyer: Mr. Chairman, for further clarification, I think you stated what your intent was. Can you tell me why, so that's on the record when we write this thing up. Why did you intend they only enter Bering Sea groundfish fisheries instead of Gulf groundfish fisheries? I mean, they're competing with the groundfish fishermen in either case, so why was...you say you're going back to your original intent, which wasn't actually stated on the record at the time, I don't think, or at least we didn't do it. Can you tell me why so we can put that in the preamble as we build this thing.

Behnken: I guess I'm sort of missing your question.

Pennoyer: Well my question is, you said your intent was that a Bering Sea crab fisherman only be able to fish groundfish in the Bering Sea, and I didn't hear why that was appropriate. I mean, you're impacting a groundfish fisherman wherever you fish, by your crossover and your additional efforts. I don't know it's not, I just didn't hear you say why that was appropriate. Or did I miss something?

Pautzke: Well, she's being consistent with the way we've treated it in groundfish.

Benton: Mr. Pennoyer, I think that this was discussed somewhat in June, but not exactly you know, exactly clearly. But the issue here is, under the moratorium, the crossover provisions that were adopted, which were adopted, you know, late in the process with the moratorium, were intended to address a problem that was identified where the crab fleet was in sort of a difficult situation because of the status of crab stocks. The Council and the Agency determined that there was a value in allowing them additional opportunities to move from the crab fishery into the groundfish fishery if they were using similar gear and operating in a similar mode as they were in the crab fishery. Now what that suggests, and I think the basis for making that determination is that there's a similarity in operations, a similarity in where these vessels were operating and how they were going about their business, and that if we were going to allow that opportunity and not violate the moratorium altogether, that what we would do is we would make it sort of a limited instance, how they could operate as crossover vessels. I think what this is attempting to do is continue down that track, in that the fishing history is in the Bering Sea for these crab vessels, they are operating in a similar mode because they are restricted to using pots during the crossover

period and under the proposed...or under the rule now, I guess, for the crossover provisions under the moratorium. And I think the intention here is to ensure that we stick with that intent and that the crab vessels would receive their groundfish licenses because of that opportunity afforded to them in the area where they have the bulk of their operations and the bulk of their history. And I think that's consistent. They operated in the Bering Sea, they were Bering Sea crabbers, it's under a Bering Sea plan. And I think if we went the other way, what we would be doing is in some ways creating an unnecessary loophole, in a way. And I think what this is intended to do is to follow the moratorium's intent, or at least the intent of why we went ahead and allowed that opportunity to take place.

Pennoyer: Yeah, the only reason I brought it up is because the moratorium didn't do that. The moratorium allowed, as I understand it, groundfish pot fishing in either area, and this is different, so I think you had to say why the difference was appropriate.

Benton: And in part, Mr. Chairman, if I could follow up. In part, one of the reasons that we were doing some of the...taking some of the actions we were taking here, is to correct what a number of folks around this table, I believe, saw as a deficiency in the moratorium with regard to the crossovers; and that's to put a closure on the crossovers and to not allow for the crossover provision to get away from us and result in even further capitalization in fisheries where it didn't seem appropriate. And we, you know, there's a number of measures that were discussed at the June meeting in this regard, and it was one of the benefits that I think the Council sees overall in the license program, is to take and put closure around the crossovers from one fishery to another. And this is one way to do that in a way that ensures those operations are more consistent with the overall intent of what we were trying to do.

Percyra: Now, I need a point of clarification here. What if a vessel crossed over in the Gulf of Alaska, he would get a Gulf of Alaska permit?

Benton: Crossed over from...well, there's only a Bering Sea crab fishery under an FMP, so that's the only thing that we're operating off of here. So their base period of operations is in the Bering Sea.

Pautzke: The base period's in the Bering Sea in all of these cases.

Percyra: But what if a Bering Sea crab vessel crossed over in the Gulf of Alaska? Then he could only fish in the Bering Sea?

Behnken: My understanding...right, because during the base period he had only operated in the Bering Sea. And under our rules for groundfish, you only got your license in the area that you had a base period, except for some very specific situations where we allowed vessels under 60 feet using pot gear to qualify for their endorsements even if they missed the base period, but they could only pick one area. And that's why I also think this is...Mr. Pennoyer's not listening, but...what we're doing with this is consistent with our license program in that regard.

Benton: Mr. Chairman, I think staff might have some information for us on that.

Hartley: Yeah, our assumption here is that if the...well, in the groundfish remember you had a, we called it a forgiveness clause, or something, where if the vessel participated only in the Bering Sea groundfish fishery in the base qualifying period, and only in the GOA groundfish fisheries in the endorsement qualifying period, we would go ahead and give them the Gulf endorsements. The same situation, we would assume, would apply to those crab boats that in the endorsement qualifying period only fished in the Gulf, we would give them their Gulf endorsements. It's only those situations where they fished in both areas, in other words, they fished in the Bering Sea in the base qualifying period, in crab, and then in the endorsement qualifying period fished both Bering Sea

and GOA groundfish, only in that situation would we be taking those Gulf endorsements from those vessels, as we have done in the groundfish fishery.

Benton: Yeah, I concur with that. The only thing I don't concur with...I don't think we're taking anything away from anybody, really, I think what we're doing is affording an opportunity in a sort of limited sense, and correcting what was probably a problem that was generated because of the one minute moratorium that we adopted at the last, you know, in terms of dealing with this problem. And you know, if we had perhaps had more time for consideration of the overall impacts and implications of some of those crossover provisions that were in the moratorium as adopted, we might have made...and this is conjecture on my part, we might have perhaps limited that to the Bering Sea. But it was certainly our intent, I think here, to maintain that consistency and deal with it as has been described.

Lauber: Alright. Any further discussion? Your motion was number one on the...

Pautzke: Mr. Chairman, I think that just to make sure you picked up on what Marcus was saying here, is that one liner in there concerning those 23 vessels...even I was not aware of what he was saying...is I thought that the conditions there were that they had crab in the Bering Sea in the base period, and they had landings in the endorsement period in both the Gulf and the Bering Sea. And I think what you're saying is, there's a subset of those 23 vessels that had a base period landing of crab in the Bering Sea, did not have any endorsement period in the Bering Sea for groundfish, but had it in the Gulf. And so you are going to give those vessels a general license for the Gulf, as the forgiveness feature you were talking about. So that's some subset of the 23 vessels.

Hartley: That's an additional set that we didn't include in that.

Pautzke: Oh, O.K. So these 23 vessels had groundfish landings, and then according to Linda's motion, they will relinquish their Gulf endorsements. That's what's on the table right now.

Lauber: O.K. Any questions? Further discussion? Any objection to the motion?

Pereyra: I object.

Lauber: Dr. Pereyra objects. Any further objections? Mr. Barker objects. Motion carries. Two objections; Barker and Pereyra.

Pautzke: So that takes care of that one line then.

Lauber: Is there further under that item?

Benton: There is a separate instance that staff have identified with the under 60 foot vessels and the situation there. And it seems to me, if I've got this straight, and help me out here if I don't, but what we're dealing with is, we've already answered how this will relate to the crossovers, so what we have here is an instance where, because of the under 60 foot provisions these vessels would qualify under one of two rules, they could qualify under either of the rules. They could either qualify as a crossover vessel and then they would be subject to those rules, or they could qualify as an under 60 foot vessel and they would qualify and have to apply under those rules. Do I have that sort of...is that basically it? O.K. Mr. Chairman, I think this is actually fairly simple. In that instance, I think what we would do is just simply have it be the Council's intent, and I'll make this as a motion if I need to, that where a vessel qualifies under those two rules, they get to choose which rule they want to apply under. They cannot apply under two different rules. You have to say, O.K. I'm applying as pursuant to these rules and these regulations for my license. So in this instance, they would apply either as a crossover vessel, or as a

under 60 foot vessel and choose an area. And that then affords them to make their choice of which way they want to go. Does that...I'm looking at staff...I think that resolves that issue, if that's the intent.

Hartley: Yeah, I think the ambiguity of it is resolved. We won't be able to predict what they might choose, of course, in our analysis, and we could only bracket it. There's only six boats and twelve endorsements, or something, so it's not that...

Benton: Yeah, it's not that significant.

Pereyra: Mr. Chairman, I'm a little bit disturbed here. In the case of vessels under 60 feet we're going to give them the option to make their own decision about where they felt that their interests might be best served, but in the case of vessels in the previous situation that crossed over and had Gulf endorsement, we're saying no, you're going to be in the Bering Sea. And you know, I think we want to consider that a little bit. Is that really consistent? It doesn't seem to me it is.

Benton: Well, no, it is consistent Mr. Chairman, I believe, because what we've said is, they can either qualify as a...in this instance they meet two different rules, and they could choose to qualify as a crossover vessel, in which case they would be bound by the same rules as those other crossover vessels. Period. Now because they also happened to qualify under a separate qualification standard because they're under 60 feet and we have this provision in recognition of the differences with the under 60 foot category, they could also elect to go that way. And the practical effect of that, I believe will be, that they're going to either choose that they're going to operate in the Bering Sea, or they're going to choose to operate in the Gulf of Alaska, because if they go with the under 60 foot category rule, they get to choose one area and one subarea. And if they go with the crossover rule, they're in the Bering Sea because they're BSAI crab vessels.

Pereyra: Well, I can see the situation there, but in the previous example, why didn't we allow the vessels to make a decision as to whether they wanted to have their groundfish endorsements count for either the Bering Sea or the Gulf of Alaska...let them make that choice rather than automatically saying, no you're going to be in the Bering Sea, you're not going to be in the Gulf. I mean, if choice is good for one, choice should be good for the other.

Lauber: We didn't have a dual situation...

Pereyra: But they would qualify for both...I think you're being inconsistent. But that's not the first time the Council's been inconsistent on something.

Lauber: Any further discussion?

Behnken: I'll just take a crack at responding to that. I mean, my recollection of the discussions we had with the under 60 foot vessel was, they're a pretty small part of the capacity...or overcapacity problem, in either the Gulf of Alaska or the Bering Sea, but they're a fleet that is really dependant on having some measure of, or ability to be mobile, to diversify, to move around. And so we gave them this EQP qualifying window that said, O.K. you missed the base, but you can qualify for an endorsement. We didn't want to make it wide open, so we said you can only pick one area, and we gave them that opportunity. I think that with the larger size vessels, there's a really big difference in them shifting around between areas and impacts on capacity, and that's why we made that call.

Benton: I think there's an important distinction here, and maybe I'm not doing a very good job of explaining it. But the distinction, in my mind at least, is that the first job that we have before us is to define the rules and clarify what those rules are and to try and make those rules as standardized as we can. And so that's why I think it's

important that we went through and clarified; here's the rules for crossovers that we allowed from the Bering Sea, the Bering Sea crabbers that were operating under a Bering Sea FMP, and the moratorium crossover provisions which were adopted. And we clarified how that rule would operate. And that rule is consistent across the board, for everyone. Then what you have to do, and what I think we're attempting to do here, is to deal with instances where it's sort of the exception that proves the rule. And so in those instances where you have people that are in an exceptional category, or an extraordinary category, and in this instance, it's where they qualify under two different rules. We're saying that they in this instance can choose, in terms of how they're going to apply, but they have to choose a rule. That rule is consistent for everybody that chooses to apply under that rule. Or if they apply under a different rule, and they meet the qualifications under that different rule, then of course that rule applies to them, and anybody else that applies under that rule that qualifies under that rule. The rules will be consistent. It's just for certain individuals, they may just due to their particular circumstances, and I think that this will be the exception, not the general instance. What we're saying is, you can't apply under both rules and get two different kinds of endorsements that nobody else could get. You have to choose a rule and go with it. And the rules will be consistent.

Lauber: Any further discussion? Ready for the question? I'll try it. Is there any objection?

Pereyra: I object.

Lauber: Dr. Pereyra objects. Motion carries.

Pautzke: That gives the six vessels a choice for endorsements.

Benton: Of which rule they get to apply.

Pautzke: Which rule would apply, yeah. Now did we cover thoroughly this first, the top row there where we have assumed that we're going to give them a Bering Sea and a Gulf of Alaska license?

Oliver: Yeah. The action by the Council clarifies that those crab vessels are only going to get their Bering Sea groundfish endorsements.

Pautzke: Not the top row. The top row they have a Gulf of Alaska groundfish base period, plus a Gulf of Alaska endorsement period, so they get that one. And then they had a crab landing in the base period in the Bering Sea and an endorsement groundfish landing, so we're going to give them that groundfish license too. So they're going to have both suites of licenses and endorsements. That's how we phrase it in here...that what we're going to do. Just so you know.

Oliver: Basically, we're going to shade the number 20 on the second row. Yeah I know, it stays the same, the first row doesn't change.

Lauber: Is there anything further now on treatment of crossovers?

Oliver: That's all Mr. Chairman.

Lauber: Can we move on to the second set, number one, qualification for state water landings...state waters landings.

Pereyra: Mr. Chairman, I think in this particular case we are potentially creating a situation where there could be a significant increase in effort, both inside and outside, both inside state waters and in federal waters. And the example being, that if a person has a vessel that has only fished in state waters, and that person really has no

intent of fishing outside of state waters, they don't need a federal permit. Yet if we go ahead and we issue them a federal permit, then that federal permit could be sold or transferred to a vessel which has no history whatsoever in either state waters or federal waters, and thereby could fish in federal waters, and of course could continue to fish in state waters. So I think that the way the AP has addressed this is probably the right way to go, and I think they had a fairly long discussion on it. And that is, that only those vessels which had federal permits that had landings in state waters would be issued a federal permit. I think again, that shows that they had an intent, whether that intent was exercised or not, had the intent of fishing in federal waters. Otherwise I do think we're going to be creating a situation for increases in effort, which is not something that I think we intended to do when we did the license plan.

Lauber: Was that a motion?

Pereyra: Yeah, it was in the form of a motion to accept the AP's recommendation.

(?): Second.

Lauber: Yeah, Mr. Benton. Well I think he spoke to his motion before.

Pereyra: Yeah, he spoke to it.

Benton: You already spoke to that, huh?

Pereyra: It's a preamble to my motion.

Benton: Well actually, I had a question for the maker of the motion before I responded, and I guess my question is, how would that increase in capacity occur, in your mind.

Pereyra: The way the increase in capacity would occur would be, somebody gets a permit who only wants to fish in state waters, he has a federal permit, he's never going to use it, but he's got it. And there happens to be a vessel operator in you know, Biloxi, Mississippi, who decides he wants to come up here and go fishing in the Gulf of Alaska. This fellow has got this permit in state waters who has no intention of fishing in federal waters, and just sells him his permit, and the fellow from Biloxi, Mississippi, comes up here. Now I'm not trying to discriminate against people from Biloxi, Mississippi, don't get me wrong, but I'm just saying that you've got to...again, here you've got a vessel coming into the fishery which you never intended to have come in. If a person had a federal permit, the chances of him selling that permit probably are...certainly he could do that and stay in state waters, but the chances of him selling it are probably a lot less because he probably has an intention of fishing in federal waters. So in that case, I think the likelihood of an increase in effort is probably less.

Lauber: Any further discussion?

Benton: Mr. Chairman, I would like to discuss this just a bit. Mr. Chairman, this is going to be fairly long, I think. The first issue really comes down to consistency, in my mind. And under the FMP for both the Gulf and the Bering Sea, since they were first adopted, the distinctions between state and federal waters have not been drawn, really. The stocks are managed pursuant to the FMP. The state has cooperated fully in that with regard to state waters. Landings from state waters are incorporated directly into the groundfish data base and are recognized. When the Council adopted the moratorium, the moratorium extended, in essence, into state waters because landings from state waters counted for moratorium rights, and that of course has recently been approved by the Secretary. And I think in other parts of the country, generally, like for example, I believe on the west coast that landings from state waters down there have also counted for awarding licenses in those fisheries. And I guess that the distinction that's being drawn at this time between state and federal waters, is going to I believe, unduly

penalize people that were participating in a fishery. It's not going to raise the overall number of licenses that are going to be available in these fisheries necessarily, because of course, those people are in the data base. We've got a finite number of licenses that are going to be issued for federal waters, and we've reduced those numbers of vessels by well over a thousand vessels already. And I don't see that this is going to lead to a major influx in capacity. For one thing, almost all of those landings in state waters are by very small vessels operating in other fisheries or engaging in small, local fisheries for groundfish near the coastal communities using vessels that are primarily salmon vessels. I'll stop with that, Mr. Chairman. Thank you.

David Fluharty: This is a question for staff, in terms of...did we count these state vessels as eligible for a license with a part of the analysis and include it in our counting, or was there a separate class of state only fishing vessels that was not included?

Brannan: Mr. Chairman, in our data base we included those vessels. We didn't separate out whether the landings were made in state waters or whether the landings were made in federal waters. In a nutshell, that's what we did. All of the landings that were recorded on fish tickets, which is where these landings would have come from, were included in our database.

Tillion: They did operate under our TAC, did they not? And therefore they were operating under a federal TAC, so what's the problem?

Lauber: Further discussion?

Robert Mace: There's no real indication of the magnitude of this...numbers.

Brannan: Mr. Chairman, when the National Marine Fisheries Service indicated that they would be bringing this issue up, I did a preliminary look at the number of vessels that might be impacted by requiring that a federal permit be held in the year that the landings were made during the endorsement qualifying period. And based on that preliminary look, it looked like the fleet could be reduced by approximately 25% over those that would have been issued licenses without requiring a federal permit in the year that the landings were made.

Pennoyer: But clarification...the fleet would be reduced by 25%, only the fleet that could fish in federal waters. If we're assuming that prior to this program, fishing in state waters was fishing, quote, on a federal TAC, that could continue. This doesn't actually reduce the fleet at all. I mean, even the AP motion doesn't reduce the fleet at all. It simply reduces the fleet that could go out into federal waters that had no history of fishing in federal waters. But the overall fleet, including those that are now fishing on the TAC in state waters, stays the same, does it not?

Brannan: Dr. Pennoyer is correct. The license limitation does not impact vessels that are fishing in state waters. The only difference is, under the license program as it's currently designed, they would receive a license and they could continue fishing [change to tape 55] in state waters, because those waters aren't covered under the license limitation program.

Tillion: Yes, while the numbers are to be reduced, do you have a breakdown on the size of the vessels? Most of these are locked in under our limited entry program to not be able to increase their size anyway. Are they not?

Brannan: Mr. Chairman, the vast number of these vessels would be in the 60 foot category and under. What I didn't look at when I made this preliminary run was how many of those vessels would have been less than 26 feet in the Gulf of Alaska, and less than 32 feet in the Bering Sea/Aleutian Islands. As you will recall, those vessels are exempt from the license limitation program and wouldn't be required to have a license to fish in the EEZ. So it looked like, you know, well over 90% of the vessels would be under the 60 foot category. I don't know how many of those would fall in the 26 and 32 foot categories.

Pereyra: Yes, two points. First of all, with regards to the capacity issue, the impact of capacity has to be viewed in terms of the species themselves. For example, if you're talking about Demersal Shelf Rockfish, you're not talking about factory trawlers, you're talking about small longline vessels that potentially could have a significant increase on Demersal Shelf Rockfish in terms of the size of the fishery. So that issue is one that has to be looked at very specifically. The other question is regarding consistency. We've gone to great lengths to provide...to require area endorsements, you know, longitudinally along the coast. This seems to me to be consistent with that. You know, you fish in state waters, you stay in state waters, you fish in federal waters, you fish in federal waters. There seems to be, you know, a lack of consistency if we don't restrict the issuance of these permits to vessels which have received federal permits to operate in federal waters.

Behnken: I just have a question. Mr. Pereyra is saying if you fish in federal waters, you stay in federal waters, if you fish in state, you stay in state. Well, if someone gets a license under our program, they can still go fish in state waters if you do this. There's nothing to keep them from doing that, so I don't see that.

Pereyra: But that's not a deficiency in our licensing program, that's a deficiency in the state's licensing program. I know, that's what I say. It's not a result of what we've done in our licensing program, it's what the state has not done. If the state issued a license and required that only vessels which had fished in the state waters could receive a license to operate in state waters, then that problem wouldn't exist. So I don't see why we should allow for expanded effort in our, you know, our area of responsibility, because of something that the state has to date not done.

Lisa Lindeman: Mr. Chairman, with respect to this issue, a question that we would ask is, with respect to fairness and consistency with standard 4, is for someone to explain how it's fair to allow a vessel that fished only in state waters, and never depended on the federal fishery, to receive a license, but to at the same time deny a license to a person who fished recently in the federal fishery, but didn't qualify during the base or the endorsement period, but did depend on, you know, has recently depended on the federal fishery, and how is that fair.

Benton: Well, I'll approach Counselor's issue first, I guess. Counselor, the rules regarding qualifications for the licenses are going to be...it would be the same whether the person had fished in state waters or not, in terms of the qualifying periods and all of the other rules. So the consistency with the rules is the same and would apply across the board. And if those people, just like the person that you mentioned, didn't meet the overall qualification standards because they didn't have enough participation in that regard, then they are not going to be able to qualify. So the distinction about how the rules are applied have nothing really to do with state waters versus federal waters, it has to do with the particular situation with the individuals. If I can continue. The people that did fish in state waters were dependant on the federal fishery. The federal management system set the TACs, the stock assessment that is done under federal management plans and programs guide and determine what happens with those fisheries inside state waters. And that is the way these fisheries have operated for any number of years. And those individuals are fishing on those same stocks, and they are fishing according to the rules that were adopted pursuant to regulations this Council...or plans this Council has adopted. And in the instance of state waters, the state's opening and closing fisheries largely, with some minor exceptions in conformance with those exact rules. And where they're not in conformance, they are consistent. So I think that there is...and it is a direct relationship between individuals that are fishing, have a history, a documented history of fishing in state waters and landing groundfish, groundfish that are managed pursuant to an FMP that's adopted by this Council and adopted by the Secretary and implemented by our respective management agencies. And I think it would be inconsistent, at this juncture, for us to ignore that dependence and that management system, a history of which has happened since this Council was first instituted. Now the other thing I would point out is that it's incorrect to say that many of these individuals had no history in the EEZ. I mean, in some instances, you have individuals that have landed groundfish in state waters that fished in federal waters, pursuant to a salmon FMP in Southeast Alaska. So they have fished in the EEZ, it's just that they've fished in the EEZ for salmon, they caught groundfish in state waters, they're all reported on state fish tickets, and they're in the data base. Those

individuals are still dependent on the EEZ and fisheries in the EEZ, it's just a sort of particular difference in their circumstance. I guess that I for one, in terms of fishing history and which fishing history you're going to count, find it extremely inconsistent that we're not going to recognize this instance, when under the moratorium we're going to grant moratorium rights to individuals that fished in state waters, landed groundfish, and made a recorded landing of groundfish in state waters. And that consistency I think is very important. And finally, I guess that the other instance that I find it very inconsistent is that when we adopted an IFQ program for halibut and sablefish, the catch history for sablefish in state waters is counted for individuals getting their IFQ and getting quota shares and awarded property rights to a certain quota of fish by the Council and by the Secretary, based on those landings in state waters. And I think that that shows a direct relationship, shows consistency with the way the management program is run, shows consistency with the way the stocks have been managed, and shows consistency with the way the data is recorded. I guess to do something else with no prior notice, and after extensive debate of this issue, is going to cause a real problem. And it's going to, I think, make all the other actions we've taken inconsistent.

Lindeman: Mr. Benton, you're stressing the consistency with moratorium and consistency with management of TACs and stuff, but our concern is, you need to address the fairness aspect. Standard four requires, not that it be consistent with other programs, that's a policy call, whatever, on the part of the Council and the Secretary, but the program that you come up with has to be fair.

Lauber: I thought he did that at the very beginning.

Benton: Mr. Chairman, can I speak? Could I respond to the question?

Lindeman: I'm just stressing that again, that's what we'll be looking at.

Lauber: Go ahead Mr. Benton, clarify that. Apparently she didn't hear that.

Benton: Counselor, I think I would find it extremely unfair if we engaged in such inconsistencies as I've identified, that the fairness issue here is addressed because the rules under the license program would apply to anybody; the qualification rules. And I spoke to this I thought, at quite some length. The fairness issue really comes down to; are the same standards being applied to an individual to get a license, in terms of the qualifications for that license. In other words, like in Dr. Pereyra's instance, it would be inconsistent if we said, if you fished in state waters you automatically get a license. We're not saying that. What we're saying is that if you made a landing in state waters, and that landing made...you know, and those landings resulted in you meeting the qualifications that are set forward in terms of landing requirements and participation in the general qualifying period, and all the other rules that we've laid out in this program. If those landings resulted in you meeting those qualifications, you'd get a license. We're not saying that just because you made a landing in state waters you're getting a license. So the individual from Biloxi, Mississippi, and I like people from Biloxi, Mississippi, myself...if they meet those same requirements, those landings requirements under the license program, they're going to get one. Whether they made those landings inside state waters or outside state waters in the EEZ, that would be consistent, in my view. And that is fair. Just like it would be unfair to say that because the people came from Biloxi, Mississippi, all they have to do is make a landing, or no landings, and they're going to get a license...that would also be unfair. So that you have to have clear rules, the rules are in the license program, those rules apply across the board to everyone. The only thing that I'm saying is that it would be unfair and inconsistent if we did not recognize those landings that were made pursuant to this management system that has been in place for all these many years.

Pennoyer: You know, this came up under the moratorium, and as you know, I had trouble with the concept during the moratorium discussion. It was approved by the Secretary and it went forward. Again, as in this case, I'm not sure what the practical impact is going to be on capacity. Obviously if somebody fishing in state waters chose

to use that federal license, there's no impact probably anyhow, because he could continue to fish in state waters. The only impact comes if the license is sold, a person continues his past practices fishing in state waters under the federal TAC, however we work that out, and so he gets to continue that and you additionally add another boat to federal waters. So there is an increase in capacity. I don't know how much it is. Now that is consistent with the moratorium, but we all along here in several of these other discussions, have said cutting down from the moratorium is an acceptable thing to do. We have said that we are not necessarily going to be consistent with the moratorium. Look at the question of vessel loss. We specifically decided not to be consistent with the moratorium because this program is intended to tighten up from the moratorium. I don't, again, had not come in here interested in the fact that we were going to change something, but I wanted to find out why we thought this was a necessity. I think even if you adopted the AP motion, the consistent practice of fishing on federal TACs in state waters would continue. There is no change in that at all. So I don't know that I've...well, it's true that they're going to be consistently held to the question of being in the right qualification period, so prospectively this doesn't have any impact at all. Nevertheless, they are not being denied a fishery in state waters on federal TACs, even if you adopted the AP motion. And I guess what I need to understand, Dave, is as we tried to do under the moratorium, is why you think it's necessary that these people enter an EEZ fishery in which they have no record of participation, even though they can continue to participate in state waters as they have in the past. My presumption is that if they were fishing in the EEZ without an EEZ license, and therefore you've got the question of where the fish really were landed, they could have been picked up for doing that. I mean, enforcement-wise, that could of happened at any time, as it could in the future if they decided to do that practice. So you're not denying them anything they've said they've been doing all along by adopting the AP motion, which I have not been pushing. I'm just trying to understand your rationale for not wanting to do that. And if that's clearly on the record, and it's not just consistent with the moratorium, or not...because we've done other things that aren't consistent with the moratorium, but it's somehow consistent with the logic of this Council in reducing effort while still accommodating, for example, in the Gulf I understand some of the social-economic needs that are different than the Bering Sea. And I don't know why letting people continue to do what they've said they've been doing all along is a dis-accommodation. So that's what I think you need on the record, and I don't think you've really spoken to that yet.

Tillion: Mr. Chairman, at the present time our seasons for cod fish in the northeastern Gulf have been in those early months when the cod are in close to shore. You would be committing a very unfair act if you denied these vessels the right to follow those same fish if we were to change the season. If you had this harvest in July, you would have to be in the EEZ. They're not in there anymore. When you're fishing in January, February, and March you don't have to go out in the Gulf to catch them, they're right in close to shore, so you're fishing in state waters, both for the shelter and otherwise. So during the qualifying periods we've had, there has been no open season when the bulk of the stocks that they had to fish were in EEZ waters. They were readily available right near town, close to shore, and so their records were built therein. If we deny them the right to go to the EEZ when we change our seasons, we might very well lock out a whole segment of the fleet that has been fishing close in because we've now opened the season where the fish aren't there any more.

Behnken: I guess I would add to that. That's one situation I was going to mention. The other, which Mr. Benton alluded to, but just to elaborate, is the Southeast troll fishery which is operating in federal waters and often is taking groundfish pursuant to that as bycatch, in a bycatch mode, and landing that, and when it's sold is required to put it on a miscellaneous fin fish card, which is a state card. So there's nothing showing that they are fishing...that they are actually participating and depending on a federal fishery, when in fact they are. And you would be closing those people out of an opportunity that they have always depended on. I think, you know, those are the two situations I can think of. I imagine there's others. I think the ling cod fishery would probably fall into the same situation.

Pereyra: Mr. Chairman, I'm somewhat concerned. You mean that these vessels can fish in federal waters without a federal permit?

Behnken: Well, they're under a federal FMP for salmon, but it's a state managed limited entry fishery.

Pereyra: I'm still confused. But Mr. Chairman, regarding this fairness issue, earlier we saw fit to deny Gulf of Alaska participation by those vessels that had crossed over and had fished during the endorsement period in the GOA. I personally felt that that was unfair, and I voted against it. Earlier, a couple of days ago, there was quite a bit of testimony given to us by people in the Western Gulf, small vessel operators in the Western Gulf, that said what we did to them was unfair. We required a greater landing requirement for vessels to get the endorsement for Central and Southeast Outside, than we did for the Western Gulf. Lots of protection for boats operating out of Sitka and the Southeast area, but a lot less protection for vessels that operated in the Western Gulf, small vessels there. That was probably unfair. To now all of a sudden cloak ourselves in some sort of a fairness doctrine I find to be amusing, at worst.

Tillion: If Dr. Pereyra would be so kind as to make a motion to make it just as tough in the Western Gulf as it was in the Eastern Gulf, I'd be pleased to support him.

Lauber: We have one Pereyra motion on the floor right now. One at a time.

Mace: Speaking of that motion, it refers to the AP recommendation, and I think that we should have that verbalized, if that's what we're going to be voting on, have the Executive Director read that motion specifically.

Pautzke: It's that the AP recommends that a federal permit requirement be added to the license limitation eligibility requirements during the endorsement qualifying period.

Benton: I need to respond, I believe, to Mr. Pennoyer's question earlier. I guess, Steve, the overall intent here is of course to reduce the number of vessels and to reduce capacity. And in this regard, at least this...and by staff's own acknowledgment 90% of these or greater, of the vessels we'd be discussing will be 58 foot or lower. We do not know, given the status of the data, how many of those solely made landings in state waters, clearly some of them made landings in state and federal waters, probably the bulk of them. There may be a sizeable number of small vessels though that did make landings just in state waters, and that gets to the fairness issue of changing their status at this late date, when all along the Council has recognized, and the Secretary has approved, restrictive measures that limited access in the fisheries and were intended to reduce capacity that recognize state landings and awarded quota shares, property rights on fish stocks, to those individuals based on a quota share coming out of state landings in state waters. It is inconsistent and unfair, in my mind, to now try and preclude other people who have been playing by those same rules from receiving that license so that they could continue to operate in the way that they want to operate. Yes, you're correct, they probably could continue to operate in state waters, but the point is, that if, as I think it was Mr. Tillion was pointing out, what do they do if once the license program goes into effect and they are unable to move, maybe you say, even out to four or five miles and to harvest resources out there because they are now precluded from doing that and all the TAC is going to vessels that are outside that boundary. I mean it's going to set up a situation where those people are precluded from the fishery that they normally have participated in. And I think that that is certainly a concern, and something that we have to be cognizant of. With regard to Dr. Pereyra's remark, I would just point out yet again, that all we are doing is clarifying the rules, and those rules apply equally to all folks. And maybe the rules are different in different instances, and I think there are good rationales for those rules to be different in different instances, but nonetheless, the rules will be the rules, and they will be applied equally to people from anywhere in the country. And those are the rules, if they are adopted by the Secretary. If we were making the rules not apply equally, then I would agree with him and I would be the first to say that we have made a terrible mistake. We are applying...we are developing rules, and then those rules are going to be applied equally. And I guess with that I'll...

Pereyra: Question.

Lauber: Ready for the question? I think we'd better call the roll on this one. I've pushed my luck as far as I can go.

Benton: Could we read the motion first though please.

Pautzke: The motion is to accept the AP recommendation for the federal permit requirement during the endorsement qualifying period.

Pereyra: Which is...

Lauber: If you vote yes, you're voting...

Pautzke: If you vote yes...

Pennoyer: Mr. Chairman, you've closed discussion on it then? I had one other, I had one additional question.

Lauber: Oh, no, no, no. It's always open until we starting taking votes. Go ahead.

Pennoyer: I had one additional question and comment then. I understand what you said about the IFQ program, although currently we're proceeding as though the historical fishery in state waters takes place regardless of what we've done under the quota shares, and that's still to be worked out. So I don't know that we've set a precedent one way or the other in the way we've handled it in any final sense. But regardless of that, I hear the discussion about seasons might be set at times when people couldn't move in and out, and I hear there are some exemptions, I haven't looked at the troll regulations, but there may be something there, and ling cod, as you mentioned, I don't think is included in the groundfish regs, so I'm not sure how that...Anyway, there probably are exemptions. I don't know that I envision the Council moving seasons around so people don't have access, but I guess that could happen, so I think that's a point. The other point you seem to be bringing up is that past practice may have been that people were fishing, quote, illegally; by fishing inside and outside state waters without getting a federal groundfish permit. And given the line is blurred, I'm not sure that that's probably an illogical assumption. We have had trouble distinguishing in the landings, so, that may have occurred and maybe you want to take that into account. I'm not clear what...what I wanted to get on the record was not just that you wanted to be consistent, but the rationale, and I've heard one from Mr. Tillion, Ms. Behnken. So is part of the thrust of this the fact that people have been fishing in both places and your concern is that that may not be taken into account? Actual practice.

Tillion: I'm not saying they have been fishing in both places, Mr. Pennoyer, I'm just saying that those that have a federal permit have no restriction about moving in, and do so at this time when the resource is that close. You know from your years in the business that it merely takes a temperature change or anything else and the resource might not always be where it is today. And therefore if we're allowing those who have a federal permit to move into state waters when the fish have moved in, it's necessary that we have other boats that are dependent on this be able to move out at such times as the resource has moved out. We're still talking about fishing on the same resource under a TAC that we have set. Don't penalize this group.

Behnken: I think actually, part of the answer to your question is, yes, there are vessels that have been fishing both sides, and it may not be showing up on federal licenses because with the salmon fleet, the catch report follows where the bulk of the salmon was caught, and the groundfish are recorded sort of pursuant to that, and some of that groundfish is coming outside three miles and some is inside. I mean, the troll fleet's going back and forth across the line all the time; no one pays attention to a three mile line, you're following fish. So I think part of the answer to your question is yes. I think the other part that Mr. Tillion raised about the Pacific cod fleet is that you have a fleet that's again followed the fish, and during that EQP, which is all we have required of some vessels

under 60 feet, their participation may have been inside three miles because that might have been where the fish were. But you know, in another year, when this season's at a different time or the fish happen to be out farther, the fleet wouldn't be inside that three mile line.

Pautzke: I was just going to mention, it seems to me that considering what Mr. Tillion was talking about as far as the stocks moving in and out, that allowing those vessels to have, to be able to have licenses, is consistent with national standard three, which is managing the stock throughout its range. I mean, it is the same stock going in and outside three miles. It seems to me there is a consistency argument there with national standard three.

Benton: Mr. Pennoyer raised the sablefish fishery and in fact, I think...and the IFQ program, and I think in many ways that's a very good example of what we are talking about in that instance. A program that was intended to reduce capacity, recognized landings inside state waters, provided a right to fish, you know, in the form of an IFQ, from those landings, and that that right to fish transfers out to the EEZ. And in fact, we find ourselves in a situation right now where, you know, where that right that is transferred out into the EEZ is also being exercised inside state waters. But what we have done is we have also seen a situation where individuals fishing in state waters, at least this last year, without an IFQ, were operating a fishery. And that fishery was still within the TAC, although we...and you're right, we have to work out and resolve those issues. But the important thing is that the Council and the Secretary awarded those rights based on landings in state waters, and those rights have subsequently moved primarily off into the EEZ, those people are operating out there. And I think that this is right along the same lines.

Lauber: Any other questions? Can someone...I have a question. If we have two situations with a federal vessel licensing program which would have required you to have a permit, and then we have...that would mean we'd have a group of vessels that are not eligible for that permit in state waters, and obviously that fishery is operating as we've mentioned, on the same fish, followed all the same rules, fished on the same TAC, and so forth. Is there a situation where we have one limited entry vessel licensing program, but then fishing on those stocks of fish, again following all of our rules, the potential for other vessels to now enter state waters exempt from our vessel licensing program? Don't we stand a chance of some of them finding a loophole and flooding that inside three mile fishery? I see Mr. Meyer back there bobbing for...it might be quite the case that we're opening one hell of a loophole here by not putting everybody under the same rules?

Pennoyer: Mr. Chairman, what you're doing doesn't change that. What you're doing allows still unlimited entry into state waters, just allows state water permits to be sold for additional federal permits. Your proposal doesn't in any way limit anybody fishing in state waters to having a federal groundfish permit, even if you let everybody have a federal groundfish permit. State waters are still open to access.

Lauber: We'd better take care of that situation. Yes.

Benton: Mr. Chairman, but what this does do is...I mean, no matter what, the number of licenses that are going to be available and operable inside federal waters is capped, and it's capped at the number that we've been looking at. And this will not result in any capacity increase in federal waters, it just recognizes...and deals with, I think, the fairness issue and the consistency issue, and in many ways, I think, a conservation issue that needs to be addressed. [change to tape 56] And if we did otherwise, I think you would see a situation where probably we may have increased pressure...alright, I'll shut up...increased pressure in state waters because those people that would be more restricted in how they could operate, or at least there may be the perception they'd be more restricted in how they could operate, and certainly they would be precluded in the future from operating in a way that they normally would have been without..

Lauber: I could see a situation where you could make a case for not allowing vessels in state waters to get a vessel license if the state had been operating separate and distinct, in other words, not following our rules, you know,

TACs, reporting everything, all the numbers being together. Really for all practical purposes, for our purpose, it's been operated as one fishery. If that had not been the case, and it had been two separate entities, I think I would be inclined to say, O.K. we could have a federal permit and let the state do what they want. But when it's been virtually indistinguishable, I mean, the same fish, the same TACs, we've cranked in all the numbers through the whole process that we've done all this, you know, I can't see any distinction. And as far as I know, just because you fish in a state, you don't give up your rights as a United States citizen, so it doesn't wash with me that we...I don't see how we can do anything else but grant them a license. Yes Counselor.

Lindeman: Mr. Chairman, the fact is though, under the Magnuson Act the Secretary's authority extends in the EEZ only, and so you know, the Council and the Secretary aren't managing the fisheries in state waters. And even though they might calculate TAC on stocks in the state as well as federal waters, the state still has, you know, its authority in state waters, and so if a fishery is closed in federal waters, it's not automatically closed in state waters, it's under agreement with the state and the state has its separate authority.

Lauber: I understand that, and that's what I'm saying. If it hadn't been...but the way it's been operating, it's virtually indistinguishable from, for our purposes, from it being, quite frankly, as though it was before 1959 and it was a territory. It really doesn't make any difference for our purpose. I realize there is a distinction. But the way we've handled that fishery, and it's been a cooperative agreement between the state and the federal government, or whatever, it's all operated, you know...I'm not going to repeat it, we've heard this all, it's just indistinguishable.

Pereyra: Mr. Chairman, I think it's not correct, the previous respondent, saying that in fact by allowing vessels which had never fished in federal waters and had only fished in state waters, to give them a federal permit, that this would not increase, potentially increase effort. It will. It will increase effort. Either those vessels then deciding at some point in the future due to pressures in whatever area, to go out and fish in federal waters on the same species, or fish on different species which do not occur inside state waters. There are a number of groundfish species out there that do not occur in state waters, to which these vessels would then have the opportunity to fish on. So in my mind, it definitely would increase effort. Now we've gone in our license plan to great lengths to restrict the movement of vessels between crab and groundfish, and to restrict them between the Bering Sea and the Gulf of Alaska, and to restrict them between different areas within the Gulf of Alaska based upon their landing history in these particular zones. In this case here, we're not doing that. We're saying that even though a person would have no experience, no landing at all in federal waters, we're going to go ahead and give him a license to move into that area, and I think that's inconsistent with the whole tenet of the license program. So I think this motion and the way in which the AP came to an understanding is correct. And I'll note that the AP...it wasn't a close vote, it was a fairly overwhelming vote on the part of the AP, so I think it's the right thing for the Council to do and I would hope that this motion could be supported.

Mace: Mr. Chairman, I respectfully suggest that we've had adequate expression of opinions on this. We've covered four of eight issues since 8:00 this morning, and if we're going to get on with our business, I suggest that we vote on this issue.

Pereyra: Question.

Lauber: There's been no objection to that. Call the roll. Voting on Dr. Pereyra's motion to require federal permits.

Benton: Excuse me, before we go again...if we vote yes on this we're moving Dr. Pereyra's...the AP motion.

Lauber: That's right.

David Benton: No.
David Fluharty: Yes.
Robert Mace: Yes.
Kevin O'Leary: No.
Steve Pennoyer: Yes.
Walter Pereyra: Yes.
Robin Samuelsen: No.
Clem Tillion: No.
Morris Barker: Yes.
Linda Behnken: No.
Richard Lauber: No.

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Pautzke: Failed.

Benton: Mr. Chairman, I would move that we include landings from state waters being qualifications for receiving a license under the license program.

Behnken: Second.

Pennoyer: Mr. Chairman, you already have, I believe, so...

Benton: Oh, if I don't have to change it...no, it's fine. Never mind, I withdraw it. I do have a question though in this regard, Mr. Chairman. In going through this debate, it just brings to mind to me two questions. And I don't need an answer on it immediately, but I would think that it might be useful for the Agency to reflect on this and maybe bring us an answer at some future time. And that is, one, are we going to then revisit the allocation of sablefish IFQs with regard to withdrawing and taking out of the consideration of allocation of sablefish IFQs those landings made in state waters and bring that program back before the Council and deal with that issue? And the second one is, as we're considering the pollock IFQ program, then I would assume that we are not going to record landings of pollock or any associated PSCs that come out of state waters as qualifications under that IFQ program. And I don't want an answer to that right now, but I would like to have an answer to that at some point. Well we haven't done that yet, I understand that.

Pereyra: But here, here you've just...

Tillion: Leave the sleeping dog lie.

Pereyra: Here you've just said that everything is going to be amalgamated, and now you're saying that they shouldn't be? That's really inconsistent.

Benton: I just, well, no, I just want to know what the question...I just wanted an answer to that question because we may come back to that issue.

Lauber: O.K. Let's move on. Did you have something to say Mr. Samuelsen?

Robin Samuelsen: Yeah, thank you Mr. Chairman. I'd like a report from the state on how they're going to manage the groundfish fisheries in state waters. We heard testimony yesterday, and we asked Chris Blackburn about the stock LD. work, identification in Prince William Sound where a fishery took place. And I haven't seen any reports from the state on how they are going to manage their groundfish fisheries, who they all anticipate that's going to be in that fishery. So hopefully by December, or shortly thereafter, we'll get a report to see how the state's going to manage their fishery.

Benton: Yeah, I think that's a very good suggestion.

Lauber: O.K. We're done with that item and we move on to differential landing requirements by area for endorsements.

John : Mr. Chairman. Just a quick issue. This was brought up in the letter from Dr. Pennoyer to yourself, and this is the issue on having differing landing requirements in the Bering Sea as opposed to the Gulf of Alaska, and also differing landing requirements from the Eastern and Central Gulf and the Western Gulf. And essentially, what the Agency is looking for is a clarification of these issues and some type of rationale.

Benton: Well, Mr. Chairman, I think we discussed a lot of this...well, I know we discussed a lot of this over the course of several meetings; the differential landing requirements between vessel size categories, between catcher and catcher/processor, and between areas, and that the record on that in June is very extensive, and from the meetings previous to that. The analysis looked at, I can't remember the number of permutations that Marcus calculated this out to be, but there was at least several hundred different permutations of different landings requirements and configurations that were analyzed, discussed, considered by the Council. I think it would not be productive to spend days going back and re-reading into the record the same record, but I would say that I have read that record, I have thought about it, we all helped build that record over several days, and I think that that record is fairly, fairly extensive. The issue perhaps that is...well there's two issues that perhaps do need some clarification, in my mind at least. One that has received considerable debate is the difference between the Western and Central Gulf. And the second one is a...what I believe is probably an error in the newsletter, the version of what came out in the newsletter and what was intended by the Council at the June meeting with regard to the relaxation of that landing requirement for the Western Gulf. And I think I'll speak to the second one first. The newsletter would have as a landing requirement for the vessels 60 to 124, one landing in the EQP, and the newsletter applied that both to catcher vessels and to catcher/processor vessels. And I went back, when I saw that I wondered about that, and I went back and found the motion that was before us on the morning that we were dealing with this, and I went back and reviewed the record. And the motion that was before us, and I'll read it, was...and this is landings requirements in the Gulf of Alaska, and the last sentence read, for the Western Gulf use the above, except that catcher vessels which are greater than or equal to 60 feet and less than 125 feet, underline catcher vessels, need only make one landing between 1/1/95 and 6/15/95. That's what the written, typed sentence was. The record on this, among other things, had Mr. Mace in dialogue with Marcus, correcting that 1/1/95 date to a 1/1/92 date to make it consistent, and Marcus' response was yes, that was a typo, can you believe it? And given the work load, I think we all could believe that that certainly was a typo. And then we voted on that and passed that particular motion. And my recollection was of that, that the intent of the Council with regard to this landing requirement for the 60 to 125 foot category, one landing would only apply to catcher vessels and the other requirements would have applied to catcher/processors, which was the two of four, or four between 1/1/95 and 6/15/95, I believe is how that worked. So that issue is one that I believe just needs to be clarified. I think it was simply a, you know, matter of mis-reporting in the newsletter, so I don't see that as being a big issue. And I'd look at, I think that the genesis of the one landing requirement came from Mr. Mace and Ms. Behnken, and I think I've got this correct.

Mace: I concur with Mr. Benton's interpretation. It was for catcher vessels. We did correct the date, as I recall, and after a great deal of testimony at the June meeting I feel that the record is sound, and I for one want to hang with those decisions.

Lauber: Any further discussion on this issue? O.K. Then why don't we take a break. Let's make it relatively short, maybe no longer than 15 minutes.

Lauber: Can we have quiet out there please.

Lepore: Mr. Chairman, I guess that speaking with Mr. Benton, he said that there was one other issue he wanted to clarify before we move into the overlap. Is that correct?

Benton: Well, Mr. Chairman, Mr. Pennoyer has asked that we at least re-emphasize the record on landings requirements generally, and some of the other requirements. And I am prepared to speak to that. But before I do, and I don't want to open this issue back up, but I do want to say something for the record with regard to this issue over state licenses and state waters. And that is that...and Mr. Robinson...Nielsen sort of alluded to it, and that is that the state recognizes that there will be a need to address groundfish management in state waters, and that very well may lead to...I can't predict this for sure because there's a whole range of regulatory matters that would have to be addressed, but that may lead to a limit access program inside state waters as well, and certainly, that if the worst scenario envisioned by Dr. Pereyra looked like it was unfolding in state waters, the federal government always has the opportunity to pre-empt fisheries in state waters and to take care of that problem, if indeed it is going to cause a conservation problem for those resources. And the only reason I'm saying that is that this isn't...not to open the issue back up, but to at least identify that there are mechanisms for addressing that problem over and above the things that we've talked about here.

Pereyra: Mr. Chairman.

Lauber: O.K. That's one, and that's one, and then...

Tillion: Let's get out of this. We're debating after the vote.

Pereyra: No, this is not after the vote, this is sort of leading up to December I think. And a question was raised in my mind by someone else as to how the state will manage the fisheries in Prince William Sound, particularly the pollock fisheries?

Benton: I'm sorry, I was thinking, but would you repeat your question?

Pereyra: Well, the fishery in Prince William Sound, it's in state waters, pollock for example, Prince William Sound, how are you going to manage that?

Benton: Well, there was a fishery that was conducted as an experimental fishery, as you know, and I think that matter is going to come up before the Board in terms of whether or not there would be any continuation as a regular fishery. I can't answer that right now, it's sort of a Board decision as to how that's going to go.

Lauber: O.K. That's enough. Now you have an issue on overlap.

Benton: Well, Mr. Chairman, I think we need to speak first to the general issue of landings requirements.

Lauber: Is that...what was it you asked? I thought you told me we had one more issue on this...on the issue that we were on when I recessed.

Lepore: That is correct Mr. Chairman, but Mr. Benton brought up two issues before, and I guess he addressed only the second issue, which was the error in the newsletter. There's still the issue of the differential between the Western and Central Gulf. Is that..

Benton: There are those issues, and also as Mr. Pennoyer requested, he wanted to at least have some discussion here of the rationale for some of the other requirements that were in the program as I understood.

Pennoyer: Yeah, landing differentials I think is what we talked about.

Lauber: Well, that's the next item on the agenda, isn't it? No?

Pennoyer: Item two.

Lepore: We're still on item two.

Benton: We're on item two, Mr. Chairman. They're all under item two.

Lauber: O.K. Fine, go. Ms. Behnken.

Behnken: Thank you Mr. Chairman, I'll start on that. And I think this is something we did talk about quite a bit previously, or at our June meeting. It was a difficult issue to resolve. But we did hear some good testimony that I found compelling anyway, that supported what we did. And that is, that during that EQP there were a number of concurrent seasons between the Bering Sea and the Gulf...or Western Gulf with pollock, which meant vessels had to fish one or the other side of the chain. There was also a problem with stocks in the Western Gulf during some of those years, and some vessels chose not to fish for conservation reasons. In effect, that shortened the EQP for vessels out there. There was also indications that it's a somewhat less stable environment because of regulatory changes, because of market conditions, because there's less processors, from the Central Gulf or the Southeast area, that led us to make those decisions. I'm hoping that some of the clarifications we've already done today with regards to the catcher/processors in that area and also crossovers, will alleviate the concerns of some of the people in the Western Gulf that testified to us about those differences.

Benton: I think that Mr. Pennoyer's question really was broader than just the Western Gulf issue, and he wanted a general discussion about the differential landings requirements across most all the areas, and some of the reasoning behind that. And I think as I pointed out, the record that was developed in June and prior to June, and the analysis that was developed about the different options that were considered, they are a matter of record. I think they are fairly extensive, but I can perhaps recap some of the high points of those, as well as I can remember them today. So I guess that I would start that off by noting that what we've done is, we have provided differential landing requirements for different sub-areas within the different FMP areas. And I think that the general underlying theme there is that there are different operational characteristics in the fisheries, those are different geographical areas, the fisheries are operated differently, the social and economic conditions that affect those fisheries are different within different areas as you go around the coast. There are similarities between areas and there are differences between areas. And if you look at sort of the range as you go around the coast, you see that for example, in the Eastern Gulf, the provisions that relate to Eastern Gulf qualifications recognize that that area is dominated by a small boat fleet that's located in pretty sparse coastal communities, that that fishery is by and large a fishery that is...that those communities are very dependent upon, and that those fleets are very dependant upon. And so the requirements in the Eastern Gulf are designed, in my view, to promote the stability of those fisheries and to ensure that pre-emption problems and similar kinds of problems that were identified by this Council through the course of the CRP process were addressed. And landings requirements, in particular I believe, were designed to do that and were, along with the trawl provisions, or the fixed gear provisions, a recognition of the overwhelming nature of the fleet and the fisheries that occur in the Eastern Gulf. So the Eastern Gulf generally has probably the most restrictive provisions of any of the areas. That also reflects sort of the historical development of that fishery. Those fisheries have been by and large, fully developed for quite a long time. You move up into the Central Gulf and the nature of the fleet and the nature of the fisheries changes to some degree. A little bit bigger water. More distant water fishing goes on out of Kodiak, for example, obviously it's one of the more powerful fishing ports in Alaska. Those fleets range further afield. The fisheries, however, right around the Central Gulf also have a large component of small vessels that are based in the local communities and that are dependent on those fisheries. And the competition in those fisheries is pretty aggressive right now, and witness some of the short seasons and openings that occur there. I think that helps to clarify that. There is a strong trawl component there, and I think that, so you know, a fixed gear only requirement obviously doesn't

work in the Central Gulf, like it doesn't work really anywhere else. If you look at the landings requirements, they are generally the same, however, with the Eastern Gulf because of the nature of the communities, and I think, the nature of the fleet. You move into the Western Gulf, and the Western Gulf is sort of a difficult area. The Western Gulf is a transitional area between the Bering Sea and the rest of the Gulf of Alaska. There is a local fleet there, it's composed of small vessels. Many of those small vessels did not actively participate in the fisheries in the earlier parts of the qualifying periods. We heard substantial testimony about the unique situation that caused that. I think the Council tried to address that issue in a number of ways with some of the landings requirements for smaller vessels to afford those individuals that got into those fisheries an opportunity. But nonetheless, the Council also, I believe, recognized that the Western Gulf is closely akin, in many ways, to fisheries in the Bering Sea, and that there is a transitional nature to the Western Gulf. And indeed, we heard testimony even this week again reiterating that characteristic in the Western Gulf. The landings requirements, and we've already clarified this for catcher vessels, were somewhat in the mid-range category were somewhat relaxed from the Central Gulf in recognition of that characteristic. The landings requirements, however, for catcher/processors were more akin to the rest of the Gulf because of concerns regarding the fishing power that catcher/processors have versus catcher vessels and the implications that would have overall for the fisheries and management of those fisheries. We had quite an extensive discussion about this issue, I believe, in June...the difference between catching capacity in various size categories of catcher vessels, and then also the true difference between catcher/processors and catcher vessels. And in fact, we had a fairly good analysis provided to us by Joe Terry in that regard, that demonstrated that there is a differential in capacity, and then subsequent impacts on the fisheries and on the fleets. The Western Gulf issue is a difficult issue, and I know that the Council struggled with this quite a bit in June. I know there's a lot of concern from folks in the audience from the Sand Point area about the implications of this for their area. I don't believe, myself, that it is going to be major, have a major impact in terms of their overall fishing ability, because I believe the issues that we have addressed today regarding catcher/processors and crossovers helps to address some of those concerns, perhaps not all of them, but certainly some of them, and I think the bulk of them. You move up into the Bering Sea, and the development of the Bering Sea fishery is considerably different than certainly the Central Gulf and the Eastern Gulf, and to some degree different than even the Western Gulf in that that fishery was the one that was dominated by foreign interests for the longest. It is a distant water fishery, the vast bulk of it large vessels in an industrial fishery that developed late in the ball game, so to speak. And I think that the landings requirements and differential there that was provided for the Bering Sea fits with the characteristics of that fishery, both in the way it developed and then also in the way it is currently operating. It recognizes that distant water nature, the recent entrance that has occurred into that fishery, and tries to accommodate that. So the landings requirements there are perhaps the most liberal in the sense of allowing vessels that have participated in that fishery, that have met these...that have participated both in terms of the moratorium and [change to tape 57--words are missing between tapes] I think I'll stop there, and I'll look at Mr. Pennoyer and see if I have answered Mr. Pennoyer's question. That is the Reader's Digest summary of what I recall from the record.

Lauber: In my experience, it's never enough. [Laughter]

Benton: I figure you've got to get down to specifics...

Pennoyer: Based on that comment Mr. Chairman and the need to get out of here, I probably shouldn't say anything. I will ask one other question though. And we've heard that since the June meeting there was additional information on increased effort and additional vessels, and would you comment on that? There was some discussion of the fact that the one landing requirement in the Western Gulf of Alaska brought vessels in that weren't on the record at the time of the discussion. I don't know if it changes the view at all because I hear what you're saying about the rationale.

Benton: Certainly. Mr. Chairman.

Lauber: Mr. Pereyra...or Mr. Benton.

Benton: Thank you Mr. Chairman. I think you've paid me an ultimate compliment by calling me Dr. Pereyra for a moment. I got promoted to commissioner the other day, and now I'm a Dr. you know.

Tillion: It is the Dr., but think what you did to Pereyra. [Laughter]

Benton: That's probably true. Well, the first thing I think is most important to recognize and acknowledge is that the Council has to use the best information available to it at the time it's making a decision. And indeed, that's what happened in June. The Council had before it, I think an extremely complex and detailed set of data, and certainly had the best information we could have regarding 1995 at the time. Now then, we were attempting to address recent participation issues, and we were operating under some constraints with regards to data because not all of the data was available at the time that we were making the decision, but we had a good sense of the matter of what the implications for different decisions were. It wasn't that, in my view, that what might be a lack of precision in data resulted in something that would be an order of magnitude larger and sufficient than to warrant completely a different decision. Certainly it was sufficient information, in my mind, and I think in the rest of the Council's mind, to make a decision...to base a decision on. Subsequent to that time, we have received information about some differences in the data that we had available to us. I do not believe that that data, in and of itself, constitutes..and again, an order of magnitude difference that would require a revision of the program in and of itself. And I also believe that we have addressed, as I stated previously, a number of the concerns that might have arisen from that data by addressing, through clarifications, some of these other measures that directly affected, I think, the Western Gulf issue in particular, and specifically the crossovers and the catcher/processor issue at the Western Gulf endorsement qualifying period.

Pereyra: I'll try not to be as long as Mr. Benton, but in general I can agree with most of the points that Mr. Benton makes, with the slight exception with the reasons for handling landing requirements, particularly in the Gulf of Alaska for factory trawlers and catcher boats differently. That particular issue, as I recall, was supposedly handled to a large degree with inshore-offshore. We excluded factory trawlers entirely from pollock and greatly restricted them in the case of cod fish. So that having further restrictions, I think, is a little bit clouded in terms of what the intent is and what the need for it is. So I would just like to add that to the record, for what it's worth.

Benton: I concur with, at least in part, with what Mr. Pereyra said. And I would like to note that the new data that we might receive subsequently from...as data becomes available for 1995, that's going to generally change numbers across the board, and that those changes, I believe, because they are across the board, are not going to be significant in any one particular instance. What it does is, it just sort of makes the data resolution better, but I don't believe it's...because it is across the board, that it will warrant changing any particular provision because, you know, it applies equally across all areas in many ways.

Lauber: Is there further comments on this issue? O.K. Now where?

Lepore: O.K. Mr. Chairman, if you would bear with me. Please excuse the format, but I think it will clearly illustrate the issue we have on the overlap. Essentially, if we would look at the second and third lines. The first line shows the moratorium period. The second line shows the license limitation program general qualification period which runs from 1/1/88 to 6/27/92. The third line, which is the endorsement qualification period for the license limitation program, begins on 1/1/92 and extends to 6/17/95, and this is for groundfish. What we have is an overlap period between 1/1/92 and 6/27/92. During that overlap period, there is the possibility of making a single landing, and essentially qualifying for a license. And this would occur, like in the Bering Sea area. This would be different than a person who would have to make a separate landing in the general qualification period and the endorsement qualification period if they did not fish in that window of time. So we just needed some clarification on that issue, and justification.

Behnken: I think...or my understanding of this is that your interpretation is correct, we do have this little window that's kind of a window of opportunity, if you will. But the way I see it is that the Council developed a double criteria for qualifying, and that's for Magnuson...historic participation and current. And we used a GQP for one and the EQP for the other. But in fact, historic and current participation is a continuum, and that's where we ended up with that overlap. I guess to me, that's one way to look at it. The other way to look at it is that if we had picked anything other than a calendar year to begin our EQP, we would have then created an inequity in effect, because some fisheries would have started right on the first day of the year, say you know, before June or after February, you know, depending on which of these sort of moratorium dates you looked at. And by picking the beginning of a calendar year we were evenhanded. So if you look at the alternative, it wouldn't have made much sense, rather than to use a calendar year as we did. So to me that's the rationale for the way we set up those periods.

Pereyra: Mr. Chairman, as I understand it, the federal notice said that we might use 2/9/92 as the cut off date, but it didn't require that we use 2/9/92. That in fact, it gave us the opportunity to be less restrictive if we so wanted. So I look upon the GQP dates as really being the controlling dates. And that whether or not the vessel is moratorium qualified or not really is immaterial, because that was mainly an interim situation. And maybe General Counsel or Mr. Pennoyer could correct me if my interpretation is wrong.

Pennoyer: I'm sorry Wally, the overlap period being discussed is 1/1/92 to 6/27/92 and you've gone back to the 2/9/92? I'm not sure of your question.

Pereyra: Well a vessel could be non-moratorium qualified, but be qualified for a license.

Pennoyer: Right.

Pereyra: And I don't see that as being necessarily inconsistent, because in the moratorium we recognize that as being a temporary, interim sort of, you know, hold the line until we decide what we're going to do. And we essentially couldn't be more restrictive than 2/9/92 unless we had some really compelling reason, I suppose, from a legal standpoint. But we can certainly be more liberal, if we so chose. And that's really what we've done here. We've chose a date that's slightly beyond the moratorium cutoff date, and I don't see that as being inconsistent with what we might do.

Pennoyer: Mr. Chairman, I agree with you. John, does that solve the inconsistency that could occur between two vessels?

Lepore: Yes.

Pennoyer: The explanation? I thought so. Thank you.

Benton: Mr. Chairman, I would just add to that that generally speaking, especially with regard to the Bering Sea, that the analysis that we had before us showed that the only way to really accomplish significant reductions in the numbers of large vessels where the capacity problem existed would have required very draconian measures. And that was an explicit...I mean it was in the analysis, and you would have had to have had very draconian landings requirements or other measures, and the Council, I think, in recognition of the difference in that fishery, the recent development, and the other issues that I raised earlier, made the decision not to go that route. And that so this overlap period, really the differential that occurs because of this overlap really does not affect the capacity issue.

Lauber: O.K. Anything further under this?

Lepore: No, I believe that that justification would also work for the second issue that we brought up also. So I think that that clears up the differential.

Lauber: Alright then, does that take care of item two? Can we move to three then, vessel upgrades, consistency with moratorium size categories. Yes, could you explain that to us.

Lepore: Mr. Chairman, this was essentially just an issue of clarification. It wasn't...we really didn't need any justification on this issue, we just wanted to make sure that our understanding of what the Council did is consistent. And that is the situation where a vessel could upgrade under the moratorium rules and still not qualify to receive a license in the vessel class that it would qualify under the license limitation. And we went over that example before when we were going through the staff reports, and essentially would be a vessel that under the moratorium was 58 feet, could extend under the 20% rule to 70 feet. In that situation they would not qualify under the vessel class under license limitation, which would be 60 feet or below. And we just wanted to make it clear on the record that in that situation, the person who would receive a license would need to obtain a vessel in the proper vessel class before they would be able to fish.

Lauber: O.K. [Many people whispering, talking amongst themselves.]

O'Leary: Mr. Chairman, I think we discussed that, and my recollection, well of course I wasn't here when you discussed it, but I believe the way it ought to be interpreted, let me put it this way, is that if a person qualifies for a license in the 58 foot class, and then subsequently under the 20% rule decides to upgrade to 70 plus feet, that person has the right to upgrade to the limit of the class, whatever it is. If they exceed the limit of the class under that 20%, if they exceed the limit of the class, then it seems logical to me that they would have to sell the lower class license that they currently hold and have to purchase the larger class license. And that seems like a reasonable thing to do under the circumstances, and I would suggest that that be the case in the way it's interpreted.

Lepore: That accurately reflects what this is, so...

Lauber: Right, and we have...that's consistent with our upgrade rules, whatever.

Pereyra: But Mr. Chairman, would it be correct that they would be allowed to cure, in this case by cutting ten feet off their boat if they so chose so that they would...

[Several people talking.] Yeah, yeah, sure, sure.

Benton: I concur with that.

Lauber: Mr. Pennoyer's getting an amusing picture or something. [Laughter]

Pennoyer: Well, I don't know if he's going to cut it off the bow of Wally's boat or the stern...take it from the middle Wally and I'll give you any glue...

O'Leary: A lot of little snub nosed boats running around.

Lauber: Or out of the middle. Well, we've seen some rather odd looking vessels, that I suspect were for that reason.

Pennoyer: John, on the next issue is four CDQ issues, and the first one is management of multi-species allocations. We discussed that and I think we had clarification of what was intended already.

Benton: Just a question of John real quick. Now we're done with number three here?

Lepore: Yes.

Benton: O.K. Fine. I just wanted to make sure.

Lauber: Now are we moving to CDQ issues.

Pennoyer: O.K. Mr. Chairman, CDQ issues. John, we discussed management of multi-species allocations and the difficulties and problems, those are something that has to come in the implementation discussion in the rule, so I don't know if we need to do any more of that here?

Lepore: I agree, Mr. Pennoyer, I believe that we did discuss this issue. It was also brought up under public testimony, so I don't think we need further clarification. We do need to sit down and talk about this issue with the state.

Benton: Mr. Chairman, I appreciate that suggestion, obviously. Either great or feeble minds think along the same lines, because I was thinking about this over the intervening period since we had that discussion. And I think that what the Department will do is, we will convene some kind of working group between National Marine Fisheries Service, ourselves, and the CDQ groups, to sit down and try and resolve how these things might work and come up with an appropriate approach. And I think, you know, we'd do that over the intervening period here, at some point.

Pennoyer: Fine. Thank you. Mr. Chairman, the other item was inclusion of pollock CDQs in a license program, and that's simply a clear expression of your intent as to how that was going to be handled.

Benton: Mr. Chairman, I think that the intent was quite clear from the beginning, at least in my mind, and that intent is that the pollock CDQs would not be included in the license program. They're included under inshore-offshore and that was, I think, an express decision that the Council had made.

Lauber: Agree. That's Council concurrence?

Pereyra: Yeah. I think that whatever we do when we discuss here, I don't think it should have a major bearing on how we handle CDQ history in the ITQ program because this is going to be a whole another issue that we're going to have to discuss. And I don't want to have us having that somehow compromised because I think it's going to be a big discussion.

Benton: Mr. Chairman, I fully concur with what Dr. Pereyra is saying. All I'm saying is that CDQ...that pollock was not included in the license limitation CDQ program.

Pennoyer: Alright. That was the question.

Lauber: O.K. Now the last item, five?

Lepore: That's correct. This is an extension of the hardship provision issue. The first time we took this up, this was under number two when we were talking about the moratorium vessels and their inclusion under hardship. This second issue is a subsidiary of that. And essentially what happens is, under the language as it currently is under provision eight which was in the newsletter handout, it discussed the relaxation of landing requirements. And there was a little concern on the Agency's part, on how that exactly would occur. And maybe I'll give an example, and that will clarify the issue. If you had two vessels that had a similar history in the general

qualification period fishing in the Gulf of Alaska...let's make it the Central Gulf. These two vessels fished and qualified under the general qualification period. One vessel sinks, the other vessel does not sink. The vessel that sunk is immediately salvaged and brought back up. These two vessels then make a landing in the endorsement qualification period. Those two vessels leave the Gulf of Alaska and fish in some other fishery that's not included under license limitation. In that situation, the vessel that sunk and was immediately salvaged would qualify under the hardship provision because they made a single landing before 6/17/95. However, the vessel that fished right next to it and made one landing would not qualify because there is a two landing requirement. And we just wanted some clarification and justification why a vessel, if it could have qualified under the normal method, would get this relaxation of landing requirements.

Benton: Mr. Chairman, I'll take a crack at that. As I think I mentioned earlier when the Council in Dutch Harbor was considering hardships and vessel replacements, provision number eight really was intended to be a hardship provision, and was not intended to be a loophole. And you know, in my view Mr. Chairman, if a vessel could have received licenses for areas under the normal rules and was qualified in that regard, then that doesn't constitute a hardship. A hardship is an instance where a vessel was lost, the individual made every attempt to get back into the fishery or was, you know, trying to do that, and came in fairly late and because of the nature of the hardship wasn't able to qualify in these fisheries. And that was clearly, I think, our intention. Like for example, I'm looking at Mr. Pennoyer's letter. In that specific instance, what I see here is the difference between essential GOA and the Bering Sea, and this vessel that you used could have fished in a manner, given the years that you have here, such that they could have if they had wanted to, they could have qualified for just about anywhere that is around, and they did not. So clearly that's not a hardship instance. This provision, I believe, is truly intended to be a hardship, and I think that that's what our intention was.

Pereyra: Mr. Benton, what would happen with a vessel that sank, came back to life again, did not make a landing in the Western Gulf for example, but said you know, I really had every intention of doing it, but I just never got there, I mean I really just couldn't put it together. You had another vessel that didn't sink, he didn't really get it together again for other reasons and didn't make a landing in the Western Gulf. You deny him an endorsement. Would you give an endorsement to the other fellow?

Behnken: Mr. Chairman, if I'm understanding the example you're giving, neither of them will get it. You have to have made that landing before the 17th. And if you came back into the fishery, you know, in the beginning of the EQP and had plenty of time to make the multiple landing, then you have to do the multiple landings. But the situation you're giving, I think neither would.

Pereyra: O.K. But the situation where the vessel that had hardship, he delayed for whatever reason, a couple of years, and finally made a landing in the Western Gulf before the 17th. The other fellow who didn't sink, he never made a landing, he wouldn't get one.

Benton: What happened to him? I mean what was he doing?

Pereyra: He was fishing in the Central Gulf along with the other fellow that sank.

Benton: But he had the opportunity. He had every opportunity...

Pereyra: Well, the other guy did too. He was only down for a couple of days, and resurrected his boat and got it cleaned up. I mean, I'm just trying to see a situation where on one hand, you're treating the person who was able to make a landing by the 17th but had sank, differently than the person who was able to make a landing by the 17th and didn't sink. You're handling them differently.

Behnken: I don't think so.

Benton: I don't either, if I understand your example correctly.

Pereyra: Because the qualifying period...the qualifying period for a vessel that didn't sink is shorter than the 17th of June, 1995.

Benton: No, the cutoff is June 17th.

Pereyra: It is? I thought it was shorter than that.

Behnken: No, it's not, it's June 17th.

Pereyra: O.K. I apologize.

Lauber: Strike that.

Benton: So are you removing your question?

Pennoyer: John, so we're O.K. on number five then? That concludes our request then in term for clarification?

Lepore: Yes, it does. Thank you.

Lauber: O.K. Now...thank you very much for that. I believe we had agreed that we would take up observers and so forth at 1:00.

Pautzke: Mr. Chairman, you're aware that we've done the license part, but you still haven't come back to the ITQ part, so you're really not done with CRP unless you just don't want to do anything more on the next step.

[End of License Limitation Discussion]