

GROUNDFISH LICENSE LIMITATION PROGRAM

**APPENDIX TO
AMENDMENT 6**

OF THE

PACIFIC COAST GROUNDFISH PLAN

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Limited Entry Committee

Mr. Rick Malsed (Chairman), Fishing Vessel Owners Association, Seattle, Washington
Mr. Jerry Hallam (Chairman - deceased), Coast Draggers Association, Aberdeen, Washington
Mr. Doug Ancona, National Oceanic and Atmospheric Administration, Seattle, Washington
Lt. Dan Brosnan, Oregon State Police, Salem, Oregon
Mr. Ralph Brown, trawler, Brookings, Oregon
Mr. Paul Heikkila, Coos County Extension Service, Coquille, Oregon
Mr. Pierre Marchand, Jessie's Ilwaco Fish Company, Ilwaco, Washington
Mr. Haddon Salt, pot fisherman, Sonoma, California
Mr. Larry Schock, shrimp fisherman, Newport, Oregon
Mr. Robert Steele, Pacific Coast Federation of Fishermans Assoc., Mill Valley, California
Mr. Mike Waldrop, trawler, North Bend, Oregon
Mr. Tony West, California Gillnetters Association, San Pedro, California

Technical Advisory Group

Dr. Rebecca Baldwin, National Marine Fisheries Service, Seattle, Washington
Mr. Robert Demory, Oregon Department of Fish and Wildlife, Newport, Oregon
Mr. Gene Fleming, California Department of Fish and Game, Sacramento, California
Dr. Daniel Huppert, University of Washington, Seattle, Washington
Mr. Al Millikan, Washington Department of Fisheries, Seattle, Washington
Dr. Dale Squires, National Marine Fisheries Service, La Jolla, California
Dr. Joe Terry, National Marine Fisheries Service, Seattle, Washington

Limited Entry Ad Hoc Committee (August through September 1988)

Ms. Judy Merchant (Chairman), Washington Department of Fisheries, Olympia, Washington
Mr. Doug Ancona, National Oceanic and Atmospheric Administration, Seattle, Washington
Mr. Gene Fleming, California Department of Fish and Game, Sacramento, California
Dr. Daniel Huppert, University of Washington, Seattle, Washington
Mr. Rick Malsed, Fishing Vessel Owners Association, Seattle, Washington
Mr. Al Millikan, Washington Department of Fisheries, Seattle, Washington
Mr. William Robinson, National Marine Fisheries Service, Seattle, Washington
Dr. Dale Squires, National Marine Fisheries Service, La Jolla, California

Limited Entry Workshop Committee

Mr. Rick Malsed (Chairman), Fishing Vessel Owner's Association, Seattle, Washington
Mr. Jim Golden, Oregon Department of Fish and Wildlife, Newport, Oregon
Dr. Daniel Huppert, University of Washington, Seattle, Washington
Mr. Bob Jacobson, Lincoln City County Extension, Newport, Oregon
Mr. Pete Leipzig, Fishermen's Marketing Association, Eureka, California
Mr. William Robinson, National Marine Fisheries Service, Seattle, Washington
Mr. Thomas Shafer, longliner, Newport, Oregon

Limited Entry Workshop Teams

Mr. Gerald Fisher, Pacific Fishery Management Council, Portland, Oregon
Mr. Gene Fleming, California Department of Fish and Game, Sacramento, California
Mr. Jim Golden, Oregon Department of Fish and Wildlife, Newport, Oregon
Dr. William Jensen, West Coast Development Foundation, Portland, Oregon
Mr. Rick Malsed, Fishing Vessel Owners Association, Seattle, Washington
Mr. Al Millikan, Washington Department of Fisheries, Seattle, Washington
Mr. Robert Shoning, Oregon State University, Corvallis, Oregon
Mr. James Seger, Pacific Fishery Management Council, Portland, Oregon
Dr. Richard Young, trawler, Crescent City, California

Limited Entry Oversight Committee

Mr. Paul Heikkila (Chairman), Coos County Extension Service, Coquille, Oregon
Mr. Mike Bancroft, National Oceanic and Atmospheric Administration, Seattle, Washington
Mr. Ralph Brown, trawler, Brookings, Oregon
Mr. Gene Fleming, California Department of Fish and Game, Sacramento, California
Mr. James Golden, Oregon Department of Fish and Wildlife, Newport, Oregon
Dr. Susan Hanna, Oregon State University, Corvallis, Oregon
Lt. Larry Kraft, Oregon State Police, Salem, Oregon
Mr. Rick Malsed, Fishing Vessel Owners Association, Seattle, Washington
Mr. Al Millikan, Washington Department of Fisheries, Seattle, Washington
Mr. Bill Robinson, National Marine Fisheries Service, Seattle, Washington

Limited Entry Drafting Committee

Dr. James Hastie, National Marine Fisheries Service, Seattle, Washington
Dr. Sam Herrick, National Marine Fisheries Service, La Jolla, California
Mr. James Seger, Pacific Fishery Management Council, Portland, Oregon
Dr. Dale Squires, National Marine Fisheries Service, La Jolla, California

Ad Hoc Technical Review Committee

Dr. Peter Fricke, National Marine Fisheries Service, Silver Spring, MD
Dr. Susan Hanna, Oregon State University, Corvallis, Oregon
Dr. Hans Radtke, economist, Yachats, Oregon
Dr. James Wilen, economist, University of California, Davis, California
Dr. Richard Young, trawler, Crescent City, California

Limited Entry Ad Hoc Committee
(April 1991)

Mr. Scott Boley, Gold Beach, Oregon
Ms. Eileen Cooney, National Oceanic and Atmospheric Administration, Seattle, Washington
Mr. Dave Duncan, Hammond, Oregon
Mr. Paul Heikkila, Coos County Extension Service, Coquille, Oregon
Mr. Pete Leipzig, Fishermen's Marketing Association, Eureka, California
Mr. Rick Malsed, Fishing Vessel Owners Association, Seattle, Washington
Mr. Jim Martin, Oregon Department of Fish and Wildlife, Portland, Oregon
Ms. Judy Merchant, Washington Department of Fisheries, Olympia, Washington
Mr. Mel Odemar, California Department of Fish and Game, Sacramento, California
Mr. William Robinson, National Marine Fisheries Service, Seattle, Washington

Pacific Fishery Management Council Staff

Mr. James Seger Ms. Michelle Perry Sailer Ms. Pam Buzan
Dr. Hans Radtke Mr. Jim Glock

EXECUTIVE SUMMARY

The following is a summary that covers the primary components of the adopted license limitation alternative of Amendment 6 to the "Pacific Coast Groundfish Fishery Management Plan". There may be specific provisions in the adopted alternative which are not included in this summary but are significant to individual circumstances. It is important to directly consult the adopted language and the proposed regulations in determining how the license limitation alternative might apply to individual situations. The rationale for various provisions of this program are provided in Chapter 3 of the supplemental Environmental Impact Statement.

Overview

The following is a brief overview of the license limitation alternative. A more detailed summary follows. The proposed license limitation program, when combined with the current management system, controls capacity of gears covered by the program in four main ways: (1) numbers of vessels, (2) gear used by the vessels, (3) length of vessel, and (4) trip size and frequency limits (primarily trawl).

The program is based on a federal permit. The fishery will be divided into limited and open access segments. Vessels using groundfish trawl, longline or fishpot gear may qualify for the permits. Vessels using these gears generally land over 90 percent of the catch. Vessels using all other gear (exempted gears) would not be required to have a permit to continue to fish for groundfish. Additionally, vessels making small landings with longline and fishpot gear would be allowed to fish in the open access segment. Other management measures would be used to control harvest rates in the open access segment of the fleet with the goal of providing year-round fishing opportunities. This goal would result in very restrictive management measures for longline and fishpot vessels relative to measures applied in the limited access fishery. Rather than issuing a separate permit for each gear that a vessel qualifies for, a single permit would be issued and endorsed for each gear with which the vessel meets the qualifying requirements. There are a number of different kinds of endorsements which may be issued for each gear (Table ES-1).

"A" endorsements are intended for those vessels with a significant involvement in the fishery during the window period. The window period and landing requirements chosen allow vessels with active, present or recent, historic participation in the fishery to qualify. "A" endorsements are transferable with the permit and valid for all Pacific Fishery Management Council (Council)-managed groundfish fisheries. There is no specified time limit on the permits; i.e., they will remain valid until the groundfish fishery management plan is amended to change the nature of the endorsement.

Provisional "A" endorsements are primarily intended for those persons who made large investments to enter the fishery at significant levels, but did not have full opportunity to meet the qualifying requirements established for the four-year window period. Through means of the provisional "A" endorsement, the Council requires that a vessel develop a history of landings in order to demonstrate its intent to enter the fishery. For example, included among those for whom the provisional "A" endorsements are intended are vessels that were under construction during some part of the window period. When construction on these vessels is completed, the vessel owners will have three years in which they must fish at an annual rate that is approximately equal to the average rate required for vessels receiving full "A" endorsements. After completion of these three years of fishing, the

Table ES-1. Summary of characteristics of the limited entry permit gear endorsements.^{1/}

Type of Gear Endorsement ^{2/}	Endorsement Characteristics				
	Nature of Issuance Criteria	"Transferable" ^{3/}	Duration	Species	Upgradable
"A"	Vessel meets minimum landing requirements during the window period, ^{4/} upgrade from provisional "A" endorsement, or certified fleet. ^{5/}	Yes	No Specified Limit	All Species	No
Provisional "A"	Conversion/construction/purchase/replacement ^{6/} / prohibited gear.	No	Three Year Maximum ^{7/}	All Species	Yes
"B"	Vessel does not meet minimum landing requirements but has 3 or more days of over 500 pound landings prior to August 1, 1988.	No	Expires December 31, 1996 ^{8/}	All Species	No
Designated Species "B"	Seniority/first come/lottery (when harvesting capacity committed to domestic processors by vessels holding other types of endorsements is less than acceptable biological catch or an apportionment to total allowable level of foreign fishing would otherwise be required.)	No	One Year Maximum	Specified Species	No

^{1/} This table summarizes the characteristics of various kinds of gear endorsements. It should be used only as a guide to understanding the endorsements. There may be details important to individual circumstances which are not included in the summary table.

^{2/} All gear endorsements may be issued for groundfish trawl, longline or fishpot gear, depending on which gear is used to meet issuing criteria.

^{3/} Endorsements are not separable from the master permit. A "transferable" endorsement generally remains valid when the master permit is transferred. When a vessel is totally lost, transfer of endorsements which would not otherwise be transferable may be allowed.

^{4/} The qualifying window period is July 11, 1984 through August 1, 1988.

^{5/} Small fleets under local jurisdiction limited entry programs may be incorporated under this federal program if they meet certain criteria. Such local limited entry programs must be in existence as of July 11, 1991.

^{6/} As used here "replacement" references only the special circumstance where a qualifying vessel was replaced with a larger vessel and permit rights transferred prior to September 30, 1990.

^{7/} Expires in the first year in which the upgrade criteria are not met.

^{8/} Or on transfer of the vessel to a new owner.

provisional "A" endorsements may be upgraded to "A" endorsements. Provisional "A" endorsements are valid for all Council-managed groundfish fisheries but are not transferable.

"B" endorsements are intended for vessels that have some low level of activity in the fishery prior to August 1, 1988 and under the current owner, but did not meet the landing requirements for vessels receiving "A" endorsements. These vessels had a very low level of dependence on the fishery. The "B" endorsements provide a three-year adjustment period during which the vessel owners may either make arrangements to stay in the fishery through the purchase of a permit or make adjustments in their fishing activity. "B" endorsements are valid for all Council-managed groundfish fisheries, but are not transferable.

Designated species "B" endorsements are intended for owners of vessels which wish to harvest potentially underutilized fisheries, but would only be issued when the commitments of "A," provisional "A" and "B" endorsement holders to harvest for domestic processors are not sufficient to take the entire allowable harvest. The endorsements issued may be valid only for delivery to domestic processors, or, if necessary, to prevent an apportionment to total allowable level of foreign fishing (TALFF), may be valid for delivery to foreign processors. Harvest limits would be placed on the designated species "B" endorsement fleet.

In addition to gear endorsements, all permits will be endorsed for the length overall of the vessel that the permit is originally issued. Length is not expected to limit the increase of harvest capacity, but will place an ultimate bounds on the per trip vessel capacity. Under a trip limit management regime, there will be little incentive to expand a vessel's trip capacity. And, where trip limits for a species include a frequency limit, there is little incentive to expand capacity for the species in terms of the number of trips which may be taken over a given period.

Establishment of this license limitation system will provide a starting point for any future programs which may be necessary to further reduce harvest capacity. To further reduce harvest capacity, a voluntary buy-back program should be implemented and the appropriate enabling legislation for funding sought. Incremental implementation of a groundfish individual transferable quota program may also be considered as a means of further reducing harvest capacity.

Detailed Summary

The Limited and Open Access Groundfish Fisheries

Under the license limitation alternative, the groundfish fishery off the West Coast (Washington, Oregon and California) would be divided into limited and open access segments. The only vessels allowed to participate in the limited access segment of the fishery would be vessels with federally issued limited entry permits valid for groundfish trawl, longline or fishpot gear (limited entry gear). Exempted gears (all other gears) and vessels using longline or fishpot gear without a limited entry permit would take part in the open access segment of the fishery. Any vessel with a limited entry permit would be considered a participant in the limited access fishery when using the limited entry gear(s) for which the permit was issued. The Council anticipates that the states would adopt complementary regulations.

The open access fishery for vessels using longline or fishpot gear without a limited entry permit would be intended to facilitate year-round harvest by small producers. The total catch of these small

producers has been minor. The open access fishery would be managed with the intent of keeping the catch of small producers in line with the historic harvest of the group as a whole.

Allocation and Management

The limited and open access segments of the fishery would be distinguished by the quotas and regulations which apply to each segment. Species and species groups for which quotas or harvest guidelines are fully utilized would be allocated between limited entry and exempted gears.

When allocations are made, the open access fishery would be apportioned a specified percentage of available yield each year based on the catch history of nonpermitted longline, fishpot and exempted gear vessels between July 11, 1984 and August 1, 1988 (the window period). On the basis of landings over this period, the percentage of catch by nonpermitted longline and fishpot vessels together with exempted gear vessels would be determined and applied to harvest guidelines or quotas in order to set the allocation for the open access portion of the fishery. After the expiration of longline and fishpot "B" endorsements, the window period catch history of vessels which received these "B" endorsements would be added to the catch histories used to determine the open access fishery allocation.

As necessary, trip limits and other management measures would be used to control harvest rates for the open and limited access fisheries. One of the primary management objectives for the open access fishery would be to provide year-round fishing opportunities. The group of vessels using longline and fishpot gears without a permit would be managed with the intent of keeping its landings in line with the window period landings of the group of longline and fishpot vessels which do not qualify for permits.

Limited Entry Permits

Limited entry permits would be issued subject to the following general criteria:

- Permits would be issued to anyone who qualifies for a gear endorsement.
- Permits would generally be issued to **current** owners (owner at the time the permit is issued) of qualifying vessels.
- Only one permit would be issued for each qualifying vessel.

Limited entry permits would be transferable; however, the gear endorsements may or may not remain valid when the permit is transferred. **A limited entry permit without a valid gear endorsement confers no rights to participate in the groundfish fishery.** After initial issuance of the permits, an individual may acquire any number of permits from other permit holders; subject to antitrust law limits. Permits would be renewed between October 1 and November 30 each year and would expire on failure to pay renewal fees for reissuance.

Gear Endorsements

Rather than issuing a separate permit for each gear with which a vessel qualifies, a single permit would be issued and an endorsement attached for each gear with which the vessel qualifies. The gear endorsement would essentially be a stamp on the permit which specifies the gear that may be used

under the limited access quota and regulations, and other general characteristics of the permit when used with that gear; e.g., whether the right to use the permit with a particular gear is transferable, what species may be harvested with the gear and the length of time the permit would be valid with the gear. **Gear endorsements may not be transferred separately from the permit to which they are attached. A "transferable" gear endorsement is one that would remain valid when the permit it is attached to is transferred.** Table ES-1 contains a summary of the various kinds of gear endorsements.

"A" Gear Endorsements - "A" gear endorsements would be valid for the catch of all Council-managed groundfish with the gear specified in the endorsement, would be valid for an indefinite period of time except as noted in Section 14.1.4 of the license limitation alternative and would be transferable.

The current owner of a vessel which met the minimum landing requirements (MLRs) between **July 11, 1984 and August 1, 1988 (the window)** may qualify for an "A" gear endorsement. The MLRs would be as follows:

Trawl: At least 9 days in which over 500 pounds of any groundfish species caught with groundfish trawl gear except Pacific whiting are landed or delivered, or 450 mt of landings or deliveries of any groundfish species caught with groundfish trawl gear except Pacific whiting, or 17 days in which over 500 pounds of Pacific whiting caught with groundfish trawl gear are landed or delivered, or 3,750 mt of landings or deliveries of Pacific whiting caught with groundfish trawl gear.

Longline: At least 6 days in which over 500 pounds of any groundfish species caught with longline gear are landed or delivered, or 37.5 mt of landings or deliveries of any groundfish species caught with longline gear.

Fishpot: At least 5 days in which over 500 pounds of any groundfish species caught with fishpot gear are landed or delivered, or 150 mt of landings or deliveries of any groundfish species caught with fishpot gear.

The groundfish species referenced in the MLR are Council-managed groundfish species caught off the West Coast.

In addition to the regular "A" endorsement, a **provisional "A" endorsement** would be issued which could be upgraded to an "A" endorsement. These endorsements would be issued for the (1) vessel owner who, during the window period, was preparing to use a vessel with limited entry gear in the West Coast groundfish fisheries (had a vessel under conversion or construction, or purchased a vessel during the window period); (2) owner of a replacement vessel who would otherwise receive an "A" endorsement on a permit endorsed for a smaller sized replaced vessel, when the replacement occurred prior to September 30, 1990; and (3) owner of a vessel making sufficient groundfish landings during the window period to meet the adopted MLR, but using a gear type which has been prohibited subsequent to the window period. To qualify under the construction or conversion provisions, construction or conversion must have been completed prior to September 30, 1990.

Like "A" endorsements, **provisional "A" endorsements** would be valid for all Council-managed groundfish caught with the gear specified, but would not be transferable. The endorsements would

be upgraded to an "A" endorsement if the vessel is used in each of the first three 365-day annual periods commencing with the date of endorsement issuance, or the date of completion/purchase/replacement, whichever is earlier. "Use" of a provisional "A" endorsement is specifically defined in the adopted alternative and requires annual vessel performance equivalent to about one-quarter of the "A" endorsement MLRs. The endorsement would expire at the end of any annual period in which landings (or deliveries) are not sufficient to meet the use criteria.

"B" Gear Endorsements - "B" gear endorsements would be valid for the catch of all Council-managed groundfish with the gear specified in the endorsement, expire three years after program implementation (approximately seven years after the end of the window period); and be nontransferable, except in the event a vessel is totally lost.

A "B" endorsement may be granted to those persons who:

- own a vessel which used limited entry gear to catch and land or deliver (joint venture or domestic) more than 500 pounds of Council-managed groundfish on three separate days prior to August 1, 1988;
- did not meet the MLRs for an "A" endorsement during the window period; and
- have continuously owned the vessel during and since the last three qualifying landing days by the vessel prior to August 1, 1988.

Designated species "B" endorsements would be issued for the harvest of specific underutilized or potentially underutilized species. The endorsement would be issued to allow the expansion of domestic harvesting capacity when the commitment to domestic processors by holders of permits valid for all species is not sufficient for full domestic utilization of the species. Catcher-processors are among the catcher vessels which may qualify for designated species "B" endorsements. Designated species "B" endorsements would also be issued for delivery to foreign processors if there might otherwise be an apportionment to TALFF. Designated species "B" endorsements would be valid for the year that they are issued and would be nontransferable. Priority for initial issuance of designated species "B" endorsements would be based on seniority in the fishery for the designated species and subsequent issuance would be based on seniority in use of the designated species "B" endorsements. Endorsements would be issued in tiers, generally to all those of equal seniority, and a harvest limit would restrict the total catch of designated species "B" endorsement recipients.

Size Endorsements

Limited entry permits would be endorsed for vessel size. Size endorsements would primarily be intended to hinder increases in the capacity of a vessel used with a permit. To allow flexibility in replacing vessels and achieving vessel stability, a permit could be used with a vessel of up to five feet greater length than the size endorsed on the permit. There would be no limit on using a permit with a vessel of smaller size, except for permits endorsed for trawl gear. For permits endorsed for trawl gear, use of the permit with a vessel more than five feet smaller than the endorsed size would result in a permanent reduction in the size endorsement to reflect the smaller size of the vessel. A provision would also allow the combination of permits into a single permit with a larger size endorsement.

Incorporation of Local Jurisdiction Limited Entry Programs

A limited entry program for a small fleet under local jurisdiction and in place as of July 11, 1991 could be incorporated under this program and gear endorsements issued for its members if it is certified as being consistent with the goals and objectives of the license limitation alternative and meets the purposes for this provision. Such a program would need to have special social significance to warrant an exception to the MLR requirements.

Appeals and the Issuance Review Board

Appeals concerning disputes over the issuance of an endorsement and permit would be made to the National Marine Fisheries Service (NMFS) review authority. At the request of the applicant, a Council appointed issuance review board, made up of representatives from the fishing industry, would make recommendations on the appeals. The Council would review the board's recommendation and provide advise to NMFS on appropriate action.

Initial Issuance and Renewal of Permits

All applications for a permit would have to be made within six months of the date NMFS announces it is ready to receive permit applications. A fee would be charged for processing the application and annual fees would be charged to renew and reissue the permit. Failure to pay renewal fees could result in the revocation of a permit. The issuance review board would be an integral part of the permit issuance process. As such, the review board expenses would be included in determining permit fees. NMFS would staff the review board and, to the extent allowable, cover its administrative expenses.

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ACRONYMS

Council	Pacific Fishery Management Council
FMP	fishery management plan
ITQ	individual transferable quota
JV	joint venture
LE permit	limited entry permit
MLR	minimum landing requirements
MSY	maximum sustainable yield
mt	metric tons
NMFS	National Marine Fisheries Service
TALFF	total allowable level of foreign fishing

14.0 GROUND FISH LIMITED ENTRY^{1/}

14.1 Introduction

14.1.1 Problem to be Addressed by this Groundfish Limited Entry System

The Council adopted the following problem statement in April 1990.

Nearly all groundfish stocks are now fully harvested by domestic fishermen in the Pacific coast groundfish fishery. While fleet harvesting capacity has increased, harvests are declining as stocks are fished down to MSY levels. Further, there is a general level of excess harvest capacity existing in most West Coast and North Pacific fishing fleets (e.g., shrimp, crab, halibut, salmon, etc). As these other fisheries grow increasingly overcrowded relative to available harvest, it becomes more likely that capacity will be redirected to the West Coast groundfish fishery when downturns occur elsewhere. In addition, the implementation of more restrictive management regulations in other fisheries, including ITQ limited entry systems, may result in increased effort during season openings in the West Coast groundfish fishery.

In the Pacific coast groundfish fishery, declining stocks and the presence of harvest capacity in excess of that necessary to catch the resource result in increasing number and complexity of regulations. Accordingly, the Council faces increased pressure to balance the conflicting need to adopt more restrictive regulations for protecting the resource with the need to provide sufficient allowable catch to sustain the fleet.

Increased number and complexity of regulations have many adverse impacts in such areas as fleet costs, resource utilization, safety, and enforcement costs and effectiveness. Additionally, there is a point beyond which added regulations which interfere with day to day vessel operations (e.g., trip limits or mesh size regulations) will not improve the Council's ability to accomplish its goals. Pressures on industry arise not only from management measures which restrict operations, but also the division of the allowable catch among larger numbers of vessels.

Two components comprise fleet harvest capacity: vessel fishing power and number of vessels. As harvesting capacity in the fisheries continues to increase, problems arising from the need for more restrictive management measures and resolution of allocation issues

1/ All references to fishing activities in these proposals are references to catching activities occurring off the Washington, Oregon and California coasts unless otherwise noted. This statement should occur throughout the regulations when they are drafted.

become more acute. It is apparent that no relief from these problems will occur if management actions continue to allow increased harvest capacity.

14.1.2 Goals and Objectives for Groundfish Limited Entry

The following are the goals and objectives for limited entry adopted by the Council in April 1990. The primary objective directly addresses the overcapacity problem, and the secondary objectives address the ways the Council hopes limited entry will promote achievement of the Council's goals and objectives for the groundfish fishery.

Goals. The goals for the West Coast groundfish fishery limited entry program are to improve stability and economic viability of the industry while recognizing historic participation, meet groundfish management objectives and provide for enforceable laws.

Primary Objective. The primary objective of the limited entry program will be to limit or reduce harvest capacity in the West Coast groundfish fishery.

Secondary Objectives. In pursuit of the primary objective, the following secondary objectives will be addressed:

Economic.

- Promote long-term economic stability
- Increase net returns from the fishery
- Allow flexibility for combination vessels

Management.

- Stabilize management regimes by reducing need for frequent inseason changes
- Reduce the cost of management
- Reduce by-catch and waste
- Encourage effort in underutilized species fisheries

Enforcement.

- Promote cost-effective enforcement by reducing need for frequent changes and tight trip limits
- Promote logistically viable enforcement by minimizing need to use regulations such as trip limits or subarea closures which are more difficult to enforce

Social.

- Recognize and accommodate historical participation of those investing their life and resources in the fishery
- Maintain a mechanism for fishery entrance/exit and flexibility for change in the fleet
- Reduce conflicts between user groups by limiting or reducing effort competition for the same resource
- Provide a stable supply of groundfish to the public at a reasonable price

14.1.3 Achievement of Goal and Objectives and Need for Additional Measures to Reduce Capacity

The license limitation system adopted under this amendment to the groundfish FMP will not in itself immediately accomplish in a readily apparent manner the goals and objectives the Council has set out for limited entry. It is a first step that may slow or prevent the worsening of conditions which impede the Council from achieving the overall goals and objectives for the fishery. The Council believes it is reasonable to expect that the primary objective will be accomplished through this license limitation system; i.e., there will be an effective limit which reduces growth in the active fleet and results in less capacity in the fishery under the adopted license limitation program than would have been present in its absence. However, movement toward the goals and objectives as compared to the existing fishery will become apparent only when a way is found to substantially reduce the capacity already present.

Establishment of this license limitation system will provide a starting point for any future programs which may be necessary to further reduce harvest capacity. To further reduce harvest capacity, a voluntary buy-back program should be implemented and the appropriate enabling legislation for funding sought. Incremental implementation of a groundfish ITQ program may also be considered as a means of further reducing harvest capacity.

14.1.4 Nature of the Interest Created

Groundfish LE permits and endorsements confer a right to participate in the West Coast groundfish fishery with an limited entry gear in accordance with the limited entry system established under the groundfish FMP as modified by this chapter of the FMP (created under Amendment 6) or any future amendment which may modify or even abolish the limited entry system. The permits and endorsements are also subject to sanctions, including revocation, as provided by the Magnuson Fishery Conservation and Management Act, 16 USC at 1858(g) and 15 CFR Part 904, Subpart D.^{2/}

14.1.5 Fisheries Within the Scope of the Limited Entry Program

The provisions of this chapter apply only to the commercial groundfish fisheries. Regulations and allocations for the treaty Indian and recreational fisheries are not affected by the provisions of this chapter unless specifically mentioned. All harvest guidelines, quotas and catches referenced are those specific to the non-treaty commercial fisheries.

^{2/} It is intended that a statement of the nature of the interest created be included on the groundfish LE permit.

14.2. Management, Allocation and General Rules on the Issuance and Use of Groundfish LE Permits, Gear Endorsements and Size Endorsements

14.2.1 Federal LE Permits Required Only for Gears Fishing on the Limited Access Quota

1. Federal groundfish LE permits will be required and issued only for those vessels catching Council-managed groundfish species^{3/} with groundfish limited entry gears (trawl, longline or fishpot gear) under the limited access quota.^{4/}
2. Vessels using exempted gears (all gears other than trawl, longline and fishpot) or using longline or fishpot gear^{5/} without a permit endorsed for one of those gears may continue to catch groundfish under an open access system. (Exempted, longline and fishpot gears used by vessels without endorsements for those gears are termed open access gears.)

14.2.2 Allocations Between the Limited and Open Access Fisheries and Management of the Open Access Fishery

1. The division of the fleet into limited and open access participants will require that separate allocations be established for each group.
2. Allocations for the open access fishery will be based on historical catch levels for the period July 11, 1984 to August 1, 1988 by exempted, longline and fishpot gears used by vessels which did not receive an endorsement for the gear.
 - a. On the basis of landings over this period, a percentage of catch^{6/} for these gears will be determined and applied to harvest guidelines and quotas in order to establish the allocation for the open access portion of the fishery. The open access portion of harvest guideline or quota will be set aside before other allocations are made.
 - b. Limited/open access allocation percentages for specific species and species groups will be determined after this limited entry program is implemented and permitted and nonpermitted vessels are identified.

3/ All references to "Council-managed groundfish" refer only to groundfish species specified in the Council groundfish FMP which are caught in the exclusive economic zone or adjacent state waters off Washington, Oregon and California.

4/ References to longline, pot and trawl gear are references to legal groundfish gears as defined by the groundfish FMP.

5/ Trawl gear may not be used without a permit because the open access fishery for limited entry gears is aimed at accommodating small producers and will likely be managed under restrictive trip limits. The fishing power of trawl gear would result in excessive discards under these trip limits. Additionally, while longline and fishpot vessels catching small quantities of groundfish will be prevented from qualifying by the structure of the MLRs (a day's landings must be greater than 500 pounds in order for the day to count toward meeting the MLR; Section 14.3.1.3), this structure will provide little barrier for most trawl vessels. Thus, there is no strong reason to provide the open access opportunity to compensate for the 500 pound per landing day threshold.

6/ Percentage of catch as determined through the Pacific Coast Fisheries Information Network database or some comparable database.

- c. An open access allocation based on catch history will be determined for each separate species, species group and area for which the Council determines an allocation is necessary.
 - d. Initial determination and any subsequent revision of the species or species groups and areas for which an open access allocation will be made will occur through a rule making under the appropriate framework in Chapter 6 of this plan.
 - e. Open access allocations for species, species groups and areas identified for such allocation by the Council will be specified during the annual process for setting specifications and apportionments described in Section 5.8 of this plan.
 - f. A change in the catch history allocation method for determining the allocation for the open access fishery will require a plan amendment.
 - g. If a group of vessels that initially is to participate in the open access fishery later receives permits in the limited access fishery, the historical catch levels of those vessels shall be deducted from the historical catch levels used to calculate the open access allocation, and the percentages used in setting the open access allocation recalculated. For example, if a vessel whose gear is prohibited by a state or the Secretary of Commerce qualifies for a LE permit under Section 14.3.2.3(9), or if a small limited entry fleet is incorporated under Section 14.3.1.3(9) and its vessels are issued LE permits, their catch history with the banned gear or the limited entry gear for which they are now going to receive permits, shall be deducted from the open access fishery's historical catch levels and open access percentages will be recalculated.
 - h. Prior to expiration of "B" endorsements, vessels' catch history using gears for which they receive "B" endorsements is not included in the catch history used to calculate the percentage of catch for open access vessels. When "B" endorsements expire, the historic catch levels of vessels which received "B" endorsements for longline or fishpot gear when using that gear will then count toward determining the proportion allocated to the open access quota. The historic catch levels of vessels which received "B" endorsements for trawl gear will continue to count toward determining the limited access quota and will not be transferred to the catch history used to determine the open access quota, even after trawl "B" endorsements expire.
3. For International North Pacific Fisheries Commission areas where quotas or harvest guidelines for a stock are not fully utilized, no limited/open access allocation will be established until it is anticipated the allowable catch for a species or group of species will be reached.
 4. Any groundfish catch by vessels with an LE permit will be counted against the quota for the limited entry gears while the fishery for the limited entry gear for which its permit is endorsed is open. A vessel may not carry or deploy limited entry gear for which its permit is endorsed when the limited entry fishery for that gear is closed. Once the limited entry fishery for the gear for which the permit is endorsed has closed, any landings by the vessel with exempted gear, or limited entry gears for which no endorsement is held, will count toward the open access quota. The catch of vessels fishing without LE permits will count toward the open access quota regardless of what open access gear is used.

5. Allocations among gear types for species other than sablefish may be established in the future. If this occurs, portions of the new allocations may, in turn, be allocated to the open access fishery under the principles set forth in this section.
6. Management of the open access fishery.
 - a. The open access portion of the fishery will be managed to provide year-round fishing opportunity.
 - b. The purpose of providing an open access alternative for vessels using longline or fishpot gear is to allow a group of vessels which has historically fished at low levels, with minimal impacts on the resource (fewer than 5 or 6 landings greater than 500 pounds per vessel during the qualifying window period, July 1, 1984 through August 1, 1988), to remain in the fishery without creating permits which may be used at higher effort levels.
 - c. The open access fishery will be managed with the intent of maintaining the historic fishing opportunities for the participant groups and to keep the overall catch in line with historic harvests. For example, trip limits for nonpermitted longline and fishpot gears operating in the open access fishery will likely be fairly low because the historic fishing levels of this group are low. Trip limits, when necessary, for some exempted gears will probably be higher because their historic fishing levels are higher.

14.2.3 Initial Issuance of LE Permits

1. Each qualifying vessel will entitle only the current owner^{7/} to one LE permit.
2. A vessel qualifies for an LE permit by meeting the initial issuance criteria for one or more gear endorsements (see Sections 14.2.5 and 14.3).
3. A given vessel will not result in the issuance of more than one LE permit.

14.2.4 Ownership Restriction and Changes in Ownership

1. Only entities (human beings, corporations, etc.) qualified to own a U.S. fishing vessel may be issued or may hold (by ownership or otherwise) an LE permit. (Foreign ownership of LE permits should be limited to the maximum degree possible given what is allowed under the law.)
2. Ownership of a permit will be considered to change when there is an ownership change on U.S. Coast Guard documents, however, an owner can submit documents to demonstrate that the controlling interest has not changed and therefore the change in documentation is not a change in ownership.

^{7/} An exception to this would occur in the case of a lost vessel (Section 14.2.9.1 paragraph 2), or if a contract transferring vessel ownership specified that the seller would retain the rights to the LE permit. In this case, a past owner (the seller) may ultimately receive the LE permit.

14.2.5 Gear Endorsements

1. An LE permit confers no rights without a valid gear endorsement attached.
2. There are four types of gear endorsements: "A" endorsements, provisional "A" endorsements, "B" endorsements and designated species "B" endorsements.
3. Gear endorsements will be affixed to the LE permit and specify type of limited entry gear which may be used to catch Council-managed groundfish.
4. A gear endorsement for a particular gear authorizes the catch of all Council-managed groundfish species with that gear, except in the case of the designated species "B" gear endorsements. Designated species "B" gear endorsements authorize catch of only the designated species specified in the endorsement and by-catch as specified for the JV fishery for that species.
5. More than one gear endorsement may be affixed to a single LE permit.
6. An LE permit will not allow the use of limited entry gears to catch any Council-managed groundfish unless a valid gear endorsement for the specific gear is affixed to the LE permit. Trawl gear and Council-managed groundfish may not be on board a vessel at the same time, nor may the gear be deployed, without an LE permit registered for the vessel and endorsed for trawl gear. If a vessel has longline or fishpot gear on board, an LE permit registered for the vessel and the permit is endorsed for the gear on board, regulations for the limited access fishery will apply.
7. Depending on the type of gear endorsement (see Section 14.3 on the specific type of gear endorsements):
 - a. the period for which the gear endorsement is valid may be limited, and
 - b. the gear endorsement may or may not remain valid when the LE permit is transferred.^{8/}
8. Gear endorsements are not separable from the LE permit and therefore may not be transferred separately from the LE permit.^{9/}
9. Limitations which apply to a given gear endorsement shall not restrict the use of any other gear endorsement on the same LE permit.
10. Rules on the issuance of gear endorsements and other characteristics of the gear endorsements are specified under sections on each type of gear endorsement (see Section 14.3).

8/ Unless otherwise noted:

- a. Transferable means separable from the vessel owner and vessel.
- b. LE permit transferability, with respect to an owner, means the LE permit may be transferred, inherited, sold, bartered, traded, given or otherwise alienated from the LE permit owner.
- c. LE permit transferability, with respect to a vessel, means the LE permit may be registered for use with a different vessel.

9/ The intent of this provision is to not allow the fishing capacity to expand by separate transfer of endorsements which might otherwise go unused.

14.2.6 Size Endorsement Will Specify the Vessel Length

The LE permit will be endorsed with the length overall (as defined for purposes of U.S. Coast Guard documentation) of the vessel for which the LE permit is initially issued. The length for which the LE permit is endorsed will be changed only when LE permits are combined, as per Section 14.2.10, or, in the case of LE permits endorsed for trawl gear, when the size of the vessel used with the permit is more than five feet less than the originally endorsed length. In the latter case, the LE permit will be reissued with a size endorsement for the length of the smaller vessel. Vessels which do not have documents stating their length overall will have to be measured by a marine surveyor or the U.S. Coast Guard and certified for that length.^{10/}

14.2.7 An LE Permit and Necessary Gear Endorsements Will Be Held by the Owner of Record of the Vessel

1. The vessel owner is responsible for acquiring and holding an LE permit with the necessary gear endorsement(s) for each vessel that is required to have an LE permit to catch Council-managed groundfish under the limited entry system (vessels fishing limited entry gear under the limited access quota and regulations).
2. The vessel owner is responsible for maintaining NMFS required documentation of the LE permit on board the vessel.
3. The LE permit will be used with one vessel only. That vessel must be declared and registered with the NMFS issuing authority. Registration is incomplete until acknowledged in writing by NMFS. (Transfer of an LE permit to a different vessel is allowed as per Section 14.2.8.)
4. A vessel owner may not use a vessel, or allow a vessel to be used, to catch any Council-managed groundfish with limited entry gear under the limited access quota and regulations unless the vessel owner holds an LE permit with gear endorsement(s) which explicitly allows such catch and the LE permit has been registered with NMFS for use with that vessel.

14.2.8 Transfer of an LE Permit to Different Owners or Vessels of the Same Owner

1. LE permits may be transferred to other owners for use with other vessels or used with other vessels under the same ownership, but will continue to be restricted by size and gear endorsements.
2. Whenever an owner wishes to transfer an LE permit to a different owner or use an LE permit with a different vessel under the same ownership, the NMFS issuing authority must be notified of the change. Notification is not complete until acknowledged in writing by NMFS.
3. LE permits may be used with vessels greater in length than the endorsed length provided the increase does not exceed five feet of the endorsed length. Original size endorsements will

10/ While not an immediate cap on vessel capacity, the size endorsement places an upward limit on the amount by which the capacity used with an LE permit may increase.

change only when LE permits are combined as per Section 14.2.10,^{11/} or when an LE permit with a trawl endorsement is transferred to a vessel five feet less in length than the endorsed length. In the latter case, the LE permit will be reissued with a size endorsement for the length of the smaller vessel.

4. The transfer of LE permits between vessels or owners may not be used to circumvent vessel landing limits.
5. When an LE permit is transferred to a different owner or vessel, provisional "A", "B" and designated species "B" gear endorsements will become invalid, unless the transfer is caused by the total loss of a vessel (as per Section 14.2.9) and ownership of the LE permit is not transferred.

14.2.9 Loss of a Vessel

14.2.9.1 Loss of a Vessel Prior to Permit Issuance

1. A "B" or provisional "A" endorsement will be issued for a vessel which qualified for a "B" or provisional "A" endorsement but is lost before the LE permits are issued. The vessel must be replaced within two years of the loss unless otherwise determined by the NMFS regional director, and the requirements of the third paragraph of Section 14.2.8 apply. The validity of the "B" or provisional "A" gear endorsement on transfer of the LE permit to the new vessel will be subject to review by the NMFS review authority.
2. For a vessel that would qualify an owner for an "A" endorsement, in the case of a vessel's sinking or total loss, all rights to a permit from the fishing history of the vessel prior to the sinking or total loss remain with the owner at the time of sinking or total loss unless specifically transferred. The vessel must be replaced within two years of the loss, unless otherwise determined by the NMFS regional director, and the requirements of the third paragraph of Section 14.2.8 apply.

14.2.9.2 Loss of a Vessel After Permit Issuance

In the event that a vessel is totally lost, the provisional "A" or "B" gear endorsements on an LE permit will remain valid if the LE permit is transferred to a different vessel owned by the same LE permit owner, subject to the following: (1) the replacement vessel may not exceed the endorsed length by five feet of the official length overall and (2) the lost vessel is replaced within two years of the loss unless otherwise determined by the NMFS regional director, and the requirements of the third paragraph of Section 14.2.8 apply. The validity of the provisional "A" or "B" gear endorsements on transfer of the LE permit to the new vessel will be subject to review by the NMFS review authority.

11/ Allowance for a slight length increase over the endorsed length is made to provide flexibility in replacing vessels.

14.2.10 Combining LE Permits

1. Two or more LE permits with "A" gear endorsements for the same type of limited entry gear (either trawl, longline or fishpot) may be combined (based on specific criteria) to "step-up" to a permit with a larger size endorsement. NMFS, with professional advice of marine architects and other qualified individuals, and after consultation with the Council and review board, will develop and implement a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed length for LE permits created by combining two or more permits possessing smaller length endorsements. The capacity represented by the appropriate length endorsement for the combined permit should not exceed the sum of the capacities of the LE permits being combined.
2. LE permits may not be divided to "step-down" to more than one permit with smaller size endorsements.
3. When LE permits are combined, "A" endorsements identical on both LE permits will remain valid. Provisional "A", "B" and designated species "B" gear endorsements will generally become invalid because they are not separable from the vessel for which they are initially issued.^{12/}

14.2.11 Permit Renewal

1. Permits must be renewed each year between October 1 and November 30 in order to remain valid for the following calendar year.
2. Notice of upcoming renewal periods will be sent by September 1 each year to the most recent address as provided to the permit issuing authority by the permit holder. It shall be the permit holder's responsibility to provide the permit issuing authority with address changes in a timely manner.
3. An annual fee will be charged which reflects the administrative costs of maintaining the permit system.
4. Failure to renew during this period will result in expiration of the permit at the end of the calendar year.

12/ For example:

1st Permit	+	2nd Permit	=	Combined Permit
Endorsement on 1st LE Permit		Endorsements on 2nd LE Permit		Endorsements on the Combined LE Permit
"A" - Trawl		"A" - Pot		None
"A" - Longline		"A" - Longline		"A" - Longline
"A" - Trawl		Provisional "A" - Trawl		None
"A" - Pot		"B" - Pot		None
"A" - Trawl		Designated Species "B" - Shortbelly - Trawl		None

5. Once a permit has expired because of failure to renew during the renewal period, it may not subsequently be renewed or reissued, except through an appeals process.
6. If a permit expires because of failure to renew, the permit holder may appeal for reissuance, provided the appeal is received by the issuance review authority by March 31 of the following year. Conditions for reissuance of a permit are listed in Section 14.4.1 paragraph 1.h.

14.3 Multilevel Gear Endorsement System

This section contains a description of the characteristics specific to each type of gear endorsement. Gear endorsements may not be transferred separate from the LE permit to which they are affixed. An LE permit confers no rights without a valid gear endorsement attached. These and other general characteristics of all gear endorsements are described in Section 14.2.5.

14.3.1 "A" Gear Endorsement

14.3.1.1 Overview of the "A" Endorsement

The "A" endorsement is intended for participants who were significantly active in the groundfish fishery with limited entry gear(s) during the qualifying window period (July 11, 1984 through August 1, 1988). The "A" endorsement allows the catch of all Council-managed groundfish species with the specified gear, remains valid when the LE permit is transferred and is valid for an unlimited period of time (subject to Section 14.1.4).

14.3.1.2 Description, Use and Transferability of the "A" Endorsement

1. Each "A" endorsement affixed to an LE permit will specify the type of gear with which the LE permit may be used (e.g., "A-Trawl").
2. The vessel for which the LE permit is registered will be allowed to catch all Council-managed groundfish with the gear specified in the "A" endorsement.
3. The "A" endorsement will remain valid when the LE permit is transferred to a different owner or vessel.

14.3.1.3 "A" Endorsement Initial Issuance Criteria

1. An "A" endorsement will be affixed to a vessel's LE permit for each gear the vessel qualifies with under these "A" endorsement initial issuance criteria.
2. Vessels must qualify separately for each gear that an "A" gear endorsement is requested.

3. A current owner of a vessel^{13/} that meets the MLRs (as per the following paragraph) between the window period (July 11, 1984 and August 1, 1988) may receive an "A" endorsement.^{14/}
4. MLRs are gear specific amounts of landings or deliveries (JV or domestic) of West Coast groundfish.

The MLRs for the limited entry gears which must be met during the window period would be as follows:

Trawl: At least 9 days in which over 500 pounds of any groundfish species except Pacific whiting are landed or delivered, or 450 mt of landings or deliveries of any groundfish species except Pacific whiting, or 17 days in which over 500 pounds of Pacific whiting are landed or delivered, or 3,750 mt of landings or deliveries of Pacific whiting.

Longline: At least 6 days in which over 500 pounds of any groundfish species are landed or delivered, or 37.5 mt of landings or deliveries of any groundfish species.

Fishpot: At least 5 days in which over 500 pounds of any groundfish species are landed or delivered, or 150 mt of landings or deliveries of any groundfish species.

5. Landings coded as groundfish trawl, longline or fishpot gear may be credited toward meeting the MLRs for the gear except any landing with:
 - a. salmon in it will not be counted toward meeting MLRs with longline gear;
 - b. shrimp in it will not be counted toward meeting MLRs with trawl gear;^{15/}
 - c. abnormal catches for the indicated gear may result in an issuing authority review of the validity of all tickets presented as evidence of meeting MLRs and a request by the issuing authority that additional evidence be presented that the gear was actually used.

13/ Only the **current** owner of a qualifying vessel at the time the permit is initially issued will be issued an LE permit (except in the case of vessel loss as per Section 14.2.9.1 paragraph 2). Without this provision, a single vessel could qualify several owners for LE permits. If private contractual arrangements have been made between a vessel buyer and seller to reserve to the seller the right to the LE permit issued for the vessel, the LE permit may ultimately be issued to the vessel seller in place of the current owner.

14/ Notice of this qualification period was published in the Federal Register on August 4, 1988 in Volume 53(150), page 29337.

15/ The Council notes that in Washington when shrimp and groundfish are landed together tickets are sometimes filled out for the groundfish and shrimp separately. The issuing authority will have to be aware of such circumstances in evaluating whether a vessel meets MLRs with trawl gear.

6. In addition to the specifications of the above paragraph, the NMFS issuing authority will have broad authority to examine information other than codes on landing tickets in determining whether MLRs are or are not met by a particular vessel and gear.
7. Prior to permit issuance, all rights of a vessel owner to an "A" endorsement will be considered transferred with the sale of the qualifying vessel unless otherwise stipulated in a contract.^{16/}
8. Vessel owners who acquire a provisional "A" endorsement will receive an "A" endorsement after meeting the upgrade criteria (Section 14.3.2.4) provided all other requirements of the limited entry program are met.
9. Members of local limited entry programs which have been Council certified and incorporated by the issuing authority (as per Section 14.3.1.4) may be issued "A" endorsements subject to the following constraint. The "A" endorsements issued on the basis of a vessel's membership in a certified limited entry program will be valid only when the vessel for which it is registered is operating under and in conformance with the certified program.
10. The NMFS review authority will have discretionary powers to grant exceptions to the qualification criteria on specified grounds. The basis on which the NMFS review authority may grant exceptions are described in Section 14.3.5.

14.3.1.4 Incorporation of Small Limited Entry Fleets

1. Small limited entry programs which are operated by local governments, in existence as of July 11, 1991 and have negligible impacts on the resource may be certified as consistent with the goals and objectives of this limited entry program and incorporated into the federal limited entry program.
2. The purpose of this provision is to recognize and provide for small fisheries with unique cultural and social importance that are dependent on the groundfish resource but have negligible impacts on the resource, as long as the size and number of vessels in the fishery are sufficiently controlled through a limited entry program under local jurisdiction.
3. A representative of a small limited entry fleet may apply to NMFS to be certified as consistent with the goals and objectives of this limited entry program and incorporated into the limited entry program. NMFS will refer the application to the permit issuance review board. The board will provide its recommendations to the Council, which in turn will provide its recommendation, together with the reasons therefore, to NMFS. If NMFS determines that a fleet meets the goals and objectives of this limited entry program and the standards of this section, it shall certify the fleet and incorporate it into the limited entry program.
4. If a fleet is certified and incorporated into the limited entry program, vessels in the fleet at the time of incorporation will be issued LE permits with "A" endorsements as provided in Section 14.3.1.3.

16/ If by contractual agreement permit rights are transferred separate from the vessel, the LE permit size and gear endorsements will continue to be restricted to those which would have been issued to the originally qualifying vessel as per Federal Register notice 55 FR 29337.

5. A permit issued to a vessel in a certified fleet under this section is only valid when the vessel for which it is registered is operating under and in conformance with the certified program. Such a permit and endorsement may be transferred to another vessel that will operate in the same certified fleet as long as the total number of vessels in the fleet does not increase.
6. If more vessels are added to a fleet in a certified limited entry program, these additional vessels will not receive "A" endorsements unless the program is recertified for the greater number of vessels, and the larger fleet is incorporated into the limited entry program.
7. For each certified fleet, there may be an upper limit placed on the amount of groundfish that vessels operating in the certified fleet may land.

14.3.1.5 Expiration of the "A" Endorsement

The "A" endorsement is valid for an unlimited period of time, except as noted in Section 14.1.4 and Section 14.2.11.

14.3.2 Provisional "A" Gear Endorsement^{17/}

14.3.2.1 Overview of the Provisional "A" Endorsement

The provisional "A" endorsement is intended for: (1) the vessel owner who, during the window period, was preparing through construction, conversion or purchase to use a vessel with limited entry gear in the West Coast groundfish fisheries; (2) the owner of a replacement vessel who would otherwise receive an "A" endorsement on an LE permit endorsed for a smaller sized replaced vessel when the replacement has occurred prior to September 30, 1990; and (3) owners of a vessel landing sufficient groundfish during the window but using a gear type which has been prohibited by a state (Washington, Oregon or California) or the Secretary of Commerce subsequent to the window period. The purpose of the provisional "A" endorsement is to require the owner demonstrate, by actual catching activity, intent to participate in the West Coast groundfish fisheries with the vessel and limited entry gear. When intent has been demonstrated (as per Section 14.3.2.4), the provisional "A" endorsement may be upgraded to an "A" endorsement. The provisional "A" endorsement allows the catch of all Council-managed groundfish species with the specified gear; becomes invalid when the LE permit is transferred, except in the case of a lost vessel; and is valid for a maximum of three years.

14.3.2.2 Description, Use and Transferability of the Provisional "A" Endorsement

1. Each provisional "A" endorsement affixed to an LE permit will specify a combination of gear type and vessel that the LE permit may be used (e.g., "Provisional 'A'-Trawl-vessel identification").

17/ If this type of endorsement were not provided, vessels constructed, converted or purchased during the window destined for any fishery in the U.S. could qualify the owner for an "A" endorsement in the West Coast groundfish fishery. The owner could then sell the permit for use with another vessel in the groundfish fishery and never participate in the fishery. Therefore, demonstration of intent through a period of substantial participation in the fishery is required before an "A" endorsement is issued. Opportunity to demonstrate this intent is afforded through the provisional "A" endorsement.

2. The vessel identified in the provisional "A" endorsement will be allowed to catch all Council-managed groundfish with the gear specified in the provisional "A" endorsement.
3. The provisional "A" endorsement will become invalid if the LE permit is transferred to a different owner or vessel, unless the transfer to another vessel is caused by the total loss of a vessel (as per Section 14.2.9) and ownership of the permit does not change.

14.3.2.3 Provisional "A" Endorsement Initial Issuance Criteria

1. A provisional "A" endorsement will be affixed to a vessel's LE permit for each gear that the vessel qualifies for under these provisional "A" endorsement initial issuance criteria.
2. No provisional "A" endorsement will be issued if a vessel has already failed to meet the upgrade criteria (Section 14.3.2.4). If a vessel has already met the upgrade criteria at the time of initial issuance, an "A" endorsement, rather than provisional "A" endorsement, may be issued.
3. A vessel must qualify separately for each gear that a provisional "A" endorsement is requested.
 - a. Owners of vessels qualifying for a provisional "A" endorsement under the following construction or conversion criteria for initial issuance must select one gear type for endorsement at application time.
 - b. Owners of vessels qualifying for a provisional "A" endorsement under the following prohibited gear criteria for initial issuance may be issued only one provisional "A" endorsement regardless of the number of gears for which the vessel might meet the qualifying requirements.
4. For a vessel to be considered "under conversion," for the purpose of determining provisional "A" endorsement eligibility:^{18/}
 - a. the conversion must have impacted the vessel's ability to meet MLRs;
 - b. previous to the conversion, the vessel must not have been structurally capable of fishing for groundfish with the specified limited entry gear, and the conversion must have involved a structural change to the vessel which makes it functionally able to fish for groundfish with the specified gear; and
 - c. the amount invested in conversion (including all equipment and gear) must be more than
 - (1) 25 percent of the appraised value of the converted vessel, or
 - (2) \$10,000

18/ Specifications of the conversion criteria in earlier drafts stated that the purchase of gear alone will not be considered sufficient to establish that a vessel is under conversion. This provision is contained by implication in Criteria b and c. To maintain this intent, any revision to these two criteria should continue to require, by implication, that the purchase of gear alone would not be sufficient to qualify the vessel for conversion provisions.

whichever is less, and of which not more than one-fifth of the expenditures may be for gear.^{19/}

- d. The NMFS issuing authority may develop additional administrative criteria for determining whether a vessel was under conversion and whether the conversion impacted the vessels ability to meet MLRs.
5. A person who contracted to have a vessel constructed or converted may qualify for a provisional "A" endorsement for the vessel if:
 - a. a contract for any part of the work was signed and substantial earnest money was paid (10 percent or more of the value on that contract) prior to August 1, 1988; and
 - b. the contract for the vessel under construction (or ownership of a vessel under conversion) is not transferred or otherwise alienated from the contract holder between August 1, 1988 and the issuance of the endorsement;^{20/} and
 - c. construction or conversion had not been completed^{21/} prior to July 11, 1984; and
 - d. fishing commenced prior to September 30, 1990.
 6. An owner who constructed or converted a vessel may qualify for a provisional "A" endorsement for the vessel if:
 - a. the keel was laid or conversion began prior to August 1, 1988; and
 - b. vessel ownership is not transferred or otherwise alienated from the owner between August 1, 1988 and issuance of a provisional "A" endorsement; and
 - c. construction or conversion was not completed prior to July 11, 1984 ; and
 - d. fishing commenced prior to September 30, 1990.
 7. A vessel owner who purchased the vessel during the window period and used a limited entry gear to catch and land or deliver Council-managed groundfish but does not meet MLRs for an "A" endorsement may qualify for a provisional "A" endorsement endorsed for the limited entry gear(s) used during the window period, provided ownership of the vessel is not transferred between August 1, 1988 and the issuance of the endorsement.

19/ Gear is defined as anything that is not permanently affixed to the vessel (not welded or bolted). Only expenditures for electronic equipment, which is specifically required for use of the gear in the groundfish fishery, will be included as an expenditure for gear for the purpose of the conversion criteria.

20/ The prohibitions against transfer of construction contracts prevents keels laid prior to August 1, 1988 on sales speculation from qualifying purchasers buying after that date.

21/ For vessels qualifying under construction provisions, completion is defined as occurring when a landing or delivery of any kind of fish is made anywhere. For vessels qualifying under conversion provisions, completion would occur with the first such landing after vessel conversion began.

8. An owner of a replacement vessel (i.e., a vessel that replaces, through construction, conversion, purchase or trade, a vessel that would qualify for "A" endorsement) more than five feet longer than the replaced vessel may be issued a provisional endorsement for the length of the replacement vessel if the replacement vessel is in place prior to September 30, 1990. "In place" means the owner of the vessel which would have qualified has acquired a replacement vessel and disposed of the replaced vessel (the vessel which would have qualified), while reserving the right to a future LE permit issued on the basis of the history of the replaced vessel. Such a vessel owner must choose between (1) an "A" endorsement on an LE permit with a size endorsement for the replaced vessel or (2) a provisional "A" endorsement on an LE permit with a size endorsement for the replacement vessel. The endorsement would be for the gear(s) that the replaced vessel would have qualified for an "A" endorsement.
9. If after the window period a gear is prohibited by a state (Washington, Oregon or California) or the Secretary of Commerce, the owners of such vessels who would not otherwise qualify for an "A" or provisional "A" endorsement may qualify for a provisional "A" endorsement for one of the three limited entry gears subject to the following provisions:
 - a. In order to qualify for an endorsement for a particular limited entry gear, the vessel must have used the prohibited gear to make sufficient landings of groundfish during the window period to meet the MLR for the limited entry gear that the endorsement is to be issued (as specified in Section 14.3.1.3 paragraph 4).
 - b. If a vessel would qualify an owner for an endorsement for more than one limited entry gear, the owner must choose from among those gears the type of gear for which the endorsement will be issued.
 - c. No endorsement will be issued if none of the MLRs for limited entry gears were met with the prohibited gear.
 - d. If an "A" or provisional "A" endorsement was previously issued for the vessel and the endorsement was subsequently transferred or expired, no endorsement may be issued under these criteria for prohibited gear.
10. The NMFS review authority will have discretionary powers to grant exceptions to the qualification criteria on specified grounds. The basis on which the NMFS review authority may grant exceptions are described in Section 14.3.5.

14.3.2.4 Criteria for Upgrading a Provisional "A" to an "A" Endorsement

1. A provisional "A" endorsement may be upgraded to an "A" endorsement by demonstrating through actual catch intent to participate in the Council-managed groundfish fishery with the limited entry gear specified in the endorsement.
2. To demonstrate intent to participate in the Council-managed groundfish fishery and in order to receive the endorsement upgrade, a holder of a provisional "A" endorsement must use or have used, as per paragraph 3 of this section, the vessel to receive the endorsement upgrade in each of the first three 365-day annual periods commencing with the earliest date of:

- a. endorsement issuance;
 - b. vessel completion^{21/} for vessels qualifying under the construction or conversion provision;
 - c. vessel purchase for vessels qualifying under purchase provisions; or
 - d. vessel replacement for vessels qualifying under replacement provisions.
3. For upgrading a provisional "A" endorsement, "use" will be defined for a particular 365-day period as one fourth of the MLR.^{22/}

Trawl: At least 2 days in which over 500 pounds of any groundfish species are landed or delivered, or 113 mt of landings or deliveries of any groundfish species except Pacific whiting, or 5 days in which over 500 pounds of Pacific whiting are landed or delivered, or 938 mt of landings or deliveries of Pacific whiting.

Longline: At least 2 days in which over 500 pounds of any groundfish species are landed or delivered, or 10 mt of landings or deliveries of any groundfish species.

Fishpot: At least 2 days in which over 500 pounds of any groundfish species are landed or delivered, or 36 mt of landings or deliveries of any groundfish species.

14.3.2.5 Expiration of the Provisional "A" Endorsement

1. The provisional "A" endorsement will expire at the end of any annual period in which a vessel's landings (or deliveries) are not sufficient to meet the use criteria. (The maximum duration of a provisional "A" endorsement is three years.)
2. The provisional "A" endorsement expires if the LE permit it is attached to is transferred, except in the case of total loss of a vessel (as per Section 14.3.2.2, paragraph 3).
3. The provisional "A" endorsement expires on failure to renew the permit (as per Section 14.2.11).
4. In the event the provisional "A" endorsement expires, another provisional "A" endorsement will not be issued.

14.3.3 "B" Gear Endorsement

14.3.3.1 Overview of the "B" Endorsement

The "B" endorsement is intended for the vessel owner who was active in the West Coast groundfish fishery prior to the cut-off date (August 1, 1988) with a limited entry gear, but did not land sufficient groundfish with the gear during the window period to qualify for an "A" endorsement. The "B" endorsement provides for an adjustment period during which a vessel owner may seek to acquire a permit with an "A" endorsement or find an alternative fishery. The "B" endorsement which allows

22/ One-fourth of the MLR is the approximate equivalent of the annualized MLR. Thus, vessels are required to land at a rate which equalized the average rate required for the window period.

the catch of all Council-managed groundfish species with the gear and vessel specified in the endorsement, becomes invalid when the LE permit is transferred or three years after implementation of the limited entry program. To qualify for a "B" endorsement, an owner must own a vessel which meets the initial issuance requirements and must have owned it during and continually since the time the qualifying activities occurred.

14.3.3.2 Description, Use and Transferability of the "B" Endorsement

1. Each "B" endorsement affixed to an LE permit will specify a combination of gear type and vessel with which the LE permit may be used (e.g., "B"-Trawl-vessel identification).
2. The vessel identified in the "B" endorsement will be allowed to catch all Council-managed groundfish with the gear specified in the "B" endorsement.
3. The "B" endorsement will become invalid if vessel ownership changes, or if the LE permit is transferred to a different owner or vessel, unless the transfer to another vessel is caused by the total loss of a vessel (as per Section 14.2.9) and ownership of the permit does not change.

14.3.3.3 "B" Endorsement Initial Issuance Criteria

1. A "B" gear endorsement will be affixed to a vessel's LE permit for each gear that the vessel qualifies under these "B" endorsement initial issuance criteria.
2. A vessel must qualify separately for each gear for which a "B" endorsement is requested.
3. Vessel owners may qualify if they:
 - a. own a vessel which landed or delivered (JV or domestic) at least 500 pounds of groundfish with limited entry gear on at least three separate days prior to August 1, 1988, but during the window period did not meet the MLRs for an "A" endorsement; and
 - b. have continuously owned the vessel during and since the last making of the landings described in paragraph a (except in the case of vessel loss, see Section 14.2.9).^{23/24/}
4. An owner will not be issued a "B" endorsement for the same gear for which an "A" or provisional "A" endorsement may be received except as follows. If an owners fails in an attempt to upgrade a provisional "A" endorsement to an "A" endorsement, and if the provisional "A" endorsement was not issued under initial issuance criteria covering replacement of smaller qualifying vessels, the owner may then apply for and receive a "B" endorsement if the vessel meets the other initial issuance criteria for "B" endorsements.

23/ The continuous ownership provision prevents individuals purchasing vessels after the cut-off date, where the vessel meets the first criteria, from qualifying for a limited duration endorsement, and prevents the repurchase of a vessel by a previous owner in order to qualify.

24/ Ownership will be considered to change when there is an ownership change on the U.S. Coast Guard documentation; however, an owner can submit documents to demonstrate that the controlling interest has not changed and therefore the change in documentation is not a change in ownership.

5. The NMFS review authority will have discretionary powers to grant exceptions to the qualification criteria on specified grounds. The basis on which the NMFS review authority may grant exceptions are described in Section 14.3.5.

14.3.3.4 Duration of the "B" Endorsement

1. The "B" endorsement will expire three years after implementation of the program.
2. The "B" endorsement will expire if the LE permit it is attached to is transferred to another vessel or owner, except in the case of total loss of a vessel (as per Section 14.3.3.2).
3. The "B" endorsements will expire on failure to renew an LE permit as per Section 14.2.11.

14.3.4 Designated Species "B" Gear Endorsements

14.3.4.1 Overview of the Designated Species "B" Endorsement

The designated species "B" gear endorsement is intended to allow for expansion of domestic processing of underutilized species in the event the limited entry fleet (those holding LE permits other than the designated species "B" endorsement holders) is unwilling to harvest the full amount of the underutilized species desired by domestic processors or acceptable biological catch, whichever is less. In this event, designated species "B" endorsements would be issued to harvesters willing to deliver to domestic processors. In addition, the endorsement may be issued when the possibility exists that an apportionment to TALFF will occur. In this event, designated species "B" endorsements would be issued to harvesters willing to deliver to JV processors. A separate endorsement is required for each combination of gear type and species. The designated species "B" endorsement allows the catch of the specified species with the gear and vessel specified in the endorsement. The endorsement becomes invalid when the LE permit is transferred and would expire at the end of the fishing year.

14.3.4.2 Description, Use and Transferability of the Designated Species "B" Endorsement

1. Each designated species "B" endorsement affixed to an LE permit will specify the combination of gear type, vessel and species with which the LE permit may be used (e.g., "Designated Species "B"-Trawl-shortbelly rockfish-vessel identification").
2. The vessel identified in the designated species "B" endorsement will be allowed to catch the species specified in the endorsement with the gear specified in the endorsement.
3. Deliveries may be made only to domestic processors (including catcher-processors delivering to themselves), unless the possibility of an apportionment for TALFF exists as per Section 14.3.4.3, paragraph 4.
4. By-catch allowances will be established using the procedures specified for incidental allowances in JV and foreign fisheries as outlined at 50 CFR Part 663, Appendix II.J.
5. The designated species "B" endorsement will become invalid if the LE permit is transferred to a different owner or vessel.

14.3.4.3 Designated Species "B" Endorsement Initial Issuance Criteria

1. A designated species "B" gear endorsement will be affixed to a vessel's LE permit for each combination of gear and species for which the vessel qualifies under these designated species "B" initial issuance criteria.
2. Designated species "B" endorsements will be issued for only Pacific whiting, jack mackerel north of 39°N and shortbelly rockfish.
3. A vessel must qualify separately for each combination of gear and species for which a designated species "B" endorsement is requested.
4. In the fall of each year, NMFS will determine the limited entry fleet's commitment^{25/} (the commitment of those holding LE permits with "A", provisional "A" or "B" endorsements) to harvest a particular underutilized species for domestic processors in the following year. If this commitment is less than domestic annual processing and the harvest guideline or quota for the species, designated species "B" endorsements valid for delivery to domestic processors only (including catcher-processors delivering to themselves) will be issued in numbers necessary for full domestic utilization. Additionally, if the procedures specified in Sections 5.8 and 5.9 of this FMP would result in the apportionment of TALFF, "B" endorsements valid for delivery to foreign processors will be issued in numbers necessary to fulfill JV processing.
5. The NMFS issuing authority will grant the designated species "B" endorsements first on the basis of seniority and then on a first come basis. Seniority will be based on use of the designated species "B" endorsement in previous years. If there are more seniority or first come applicants with equal priority than endorsements to be issued, a lottery may be held to determine who should receive the endorsements. In the first year of issuance for a particular species, endorsements will be issued first on the basis of seniority (number of years) in the fishery for the designated species rather than use of the designated species "B" endorsement.
6. A designated species "B" endorsement catch limit will be established as the harvest guideline or quota for the designated species minus the commitment of the limited entry fleet. If at any time during the fishing year it is determined that any part of the limited entry fleet commitment will not be taken, a reapportionment will be made to the designated species "B" endorsements

14.3.4.4 Expiration of the Designated Species "B" Endorsement

1. The designated species "B" endorsement expires at the end of the calendar year.
2. The designated species "B" endorsement expires if the LE permit to which it is attached is transferred to a different owner or vessel.

25/ "Commitment" means a permit holder's definite arrangement (by contract or agreement) with a specific domestic processor to deliver an estimated amount of the underutilized species.

14.3.4.5 Designated Species "B" Gear Endorsements for Holders of "A", Provisional "A" and "B" Gear Endorsements

1. "All-species" endorsement ("A", provisional "A" or "B" endorsements) holders must hold designated species "B" endorsements to catch an underutilized species with gear for which they do not hold an all-species endorsement.
2. An all-species endorsement holder is not required to hold any kind of designated species "B" endorsement for the same gear for which an all-species endorsement is held.
3. A provisional "A" or "B" endorsement holder may apply for and receive a designated species "B" endorsement for the same gear for which a provisional "A" or "B" endorsement is held, provided the endorsement holder meets the initial issuance criteria for a designated species "B" endorsement.

14.3.5 Exceptions to the Issuance Criteria and Grounds for Appeal

1. Exceptions may be granted for the time limit on replacing lost vessels, and requirements for timeliness with respect to applications for permits and permit renewal, for good cause. With respect to permit renewal, only illness, injury or death of one of the vessel owners will be considered good cause. Additionally, in the following hardship situations, where appropriate, the NMFS issuing authority may grant exceptions to permit issuance and upgrade criteria, the time limit on replacing lost vessels, and requirements for timeliness with respect to applications for permits and permit renewal.^{26/}
 - a. Insufficient documented landings with legal groundfish gear in the qualifying period due to disputes over records of landings (evidence other than landing records may be considered).
 - b. Construction or conversion criteria are not met due to documentation disputes or delays in construction or conversion.
 - c. A qualified vessel was totally lost before permits were issued (the vessel should be replaced within two years of the loss and the requirements of the third paragraph of Section 14.2.8 apply).
 - d. Illness or injury.
 - e. Litigation involving the vessel preventing the vessel owner from making sufficient landings in the qualifying period.
 - f. Death of a vessel owner preventing the surviving vessel owner(s) from making sufficient landings in the qualifying period because the vessel could not be fished.

26/ Economic hardship, loss or inactivity of a vessel due to a violation (involving the vessel) of domestic laws which prevent the use of the vessel during the window period will not entitle the owner to a LE permit or endorsement granted through the review process.

- g. Death of a vessel owner preventing fulfillment of upgrade criteria for converting a provisional "A" endorsement to an "A" endorsement.
2. Implementation of the license limitation program will require exercise of judgement in the application of particular provisions. Any dispute over how the issuing authority has applied provisions of the program may be appealed.

14.4 LE Permit Issuance Review Board

14.4.1 Functions

A permit issuance review board will be created by the Council with three functions.

1. Review appeals related to issuance of permits and gear endorsements.
2. Make recommendations to the Council on whether a non-federal/non-state limited entry system in place as of July 11, 1991 should be certified as being consistent with the goals and objectives of this limited entry program, as described in Section 14.3.1.4.
3. Make reports to the Council on the progress of the program and need for adjustments.

14.4.2 Expenses

The intent of the Council is that the issuance review board be an integral part of the permit issuance process. As such:

1. the board expenses will be included in determining permit fees, and
2. the board members will be reimbursed for expenses.

14.4.3 Advisory Role of Group

Issuance, administration of permits and review of appeals will be through the issuing and reviewing authorities (NMFS regional offices). The issuance review board shall function in an advisory capacity only.

14.4.4 Nominations

Nominations for the board may be made by anyone. Selection will be made by the Council or its designee.

14.4.5 Membership

The board should consist of:

1. "knowledgeable" fishing industry members.
2. 7 to 10 voting members.^{27/}
3. Two-thirds of the members must be present for a quorum.

14.4.6 Majority Vote

A simple majority of those present and voting shall be necessary to take action on a review.

14.4.7 Terms of Members

The term for a board member shall be three years. Terms will be staggered.

14.5 Implementation, Application and Appeals Process

1. When NMFS announces it is ready to receive applications, individuals must make application to the issuing entity for LE permits and "A", provisional "A", and "B" endorsements within six months, except as follows: (1) Owners of vessels qualifying for provisional "A" endorsements under the prohibited gear provisions must make application within six months of the prohibition date, or six months of the NMFS announcement that it is ready to receive applications, whichever comes last and (2) owners of vessels applying for a "B" endorsement after the vessel has failed to meet the provisional "A" endorsement upgrade criteria, must make application within six months of failure to meet upgrade criteria or six months of the NMFS announcement that it is ready to receive applications for permits, whichever comes last.
2. Vessel owners are responsible for submitting evidence that qualification requirements have been met.
3. Applications to the issuing authority involving the hardship situations and other special circumstances described in paragraphs 4 and 5 of Section 14.2.3, shall be submitted within six months of the NMFS announcement that it is ready to receive applications, or six months of the event which would potentially qualify the applicant for a hardship exemption or under a special circumstance, whichever comes last.
4. Untimely applications will be rejected and no permit will be issued thereon. To be timely, an application must provide all of the information required in the NMFS application announcement or in the application form, by the deadline specified in paragraph 1 of this section. If the application is complete and valid, NMFS may request any supplementary information it needs to act on the permit application.
5. If an application is denied, the applicant may appeal to the NMFS regional director. In making such an appeal, the applicant may request that in deciding the issue the NMFS regional director consult with the Council and its review board. Such a consultation would require the applicant to wave any rights to confidentiality of information.

27/ The Council should look at the composition of the fishery in each state and determine the appropriate representation from each gear group so that a broad range of expertise is available to the Council.

6. At the time of implementation, NMFS in consultation with the Council, will set and publish in the Federal Register a date after which all vessels using a limited entry gear to catch Council-managed groundfish under the limited entry quota and management regulations will be required to have an LE permit with endorsements allowing such activity.

14.6 Council Review and Monitoring

On an annual basis, either the NMFS issuing authority or the issuance review board will review the economic status of the fishery and the fishing fleet, and issue a status report to the Council evaluating achievement of the goals and objectives established for the limited entry system.