

## 17.0 SUMMARY AND RESPONSE TO WRITTEN PUBLIC COMMENT

This chapter summarizes comments received during the official comment period on Amendment 6 and the draft SEIS. There are four sections. The first section summarizes recommendations for changes to the license limitation alternative of Amendment 6. The second section summarizes comments from fishermen about their specific circumstances. A third section summarizes comments about expected impacts of the alternatives and which alternative in Amendment 6 should be adopted or pursued by the Council (status quo, license limitation, or individual transferable quotas [ITQs]) and the fourth section lists comments on the content of the draft SEIS and the process the Council followed in its consideration of limited entry. Responses are provided in italics.

### Recommendations on Changing the License Limitation Alternative

#### Area Specific Issues

1. For gears other than trawl, do not restrict harvest of fish below the 39th parallel. (Nungaray)

*Absent a limited entry program, any loosening of regulations or increase in allowable harvest for a particular gear will only result in an influx of capacity and no net gain for the current participants. If trawl gear were restricted and other gears remained unrestricted, effort and capacity of the fleet using other gears may increase, presenting the Council again with the choice of further restricting trawl gear or restricting the other gears.*

2. Use a management structure in California different from that in Washington and Oregon. (Merlo)

*The limited entry program contains some degree of sensitivity to the differing state of the fishery between areas. One of the main reasons for limiting only groundfish trawl, longline, and fishpot gear was that these were the gears which dominate the fishery, particularly in the north. Other gears such as gill net and various line gears, which are used more in the south, were exempted from the requirements of obtaining a permit. This was done, in part, at the request of representatives from California areas. Additionally, where an ABC is not fully taken in the INPFC area, initially there may not be an allocation which restricts the exempted gears. Even under the limited entry program, if trip limits or other effort controls are necessary, the Council may choose to manage the areas differently by imposing restrictions of differing type or severity on open access gears in different areas.*

3. Develop the plan on an area by area basis. (PCFFA)

*Area by area development of a limited entry plan would complicate the plan and enforcement, restrict vessel movement along the coast, and likely require increased complexity in the Council's other management measures such as trip limits and season opening dates.*

4. Allow groundfish taken on shrimp landing tickets to qualify shrimp trawlers south of Point Conception (or all shrimp trawlers) for limited entry. Fishermen in southern California did not catch a lot of groundfish during the qualifying window because of the effects of 25 years of seismic surveys, an oil spill off Santa Barbara in 1969 and an El Nino right before the window period (the commenter provided maps of the seismic surveys and a summary statement from a Mineral Management Service study on environmental effects of the surveys). Fishermen were primarily shrimp trawling during the window period because of the availability of prawns and lack of groundfish to target, however, groundfish are now starting to come back. Two thirds of the 20 boats in the association will not be able to qualify. These vessels have a negligible impact on the resource and require flexibility for economic there were not enough survival. (Southern California Trawlers Association--multiple letters)

*Vessels did not participate in the West Coast groundfish fishery during the four year qualifying window for a large variety of reasons. The Council was presented with these arguments but was not swayed that the case was significantly different from that which could be made by north coast shrimp trawlers or halibut longline vessels. Owners of these vessels might also point to better opportunities in other fisheries for the reason they did not participate in the groundfish fishery during the window period. Seismic survey studies indicated that fish moved lower in the water column during tests, but that no disaggregation of stocks occurred. Thus, the evidence did not indicate that the effectiveness of trawl gear would be changed. The El Nino effects cited occurred in 1982 and 1983. The primary biological effect has been understood as a temporary dislocation of stocks out of the area, not mass mortality. In other areas impacted by El Nino, there has not appeared to be any significant change in recruitment. Therefore, the reduction in landings in post El Nino years appears to be more from the discovery of new markets for other species than from a change in the availability of stocks. The adopted MLR for trawl gear is the highest of the gear specific requirements and is only nine landings for an average of two to three landings per year over the window period. Vessels active during the four year window period but not participating in the trawl fishery at this minimal level were clearly involved in other fisheries and not dependent on the groundfish fishery. There are 44 vessels in the southern California area which will qualify, demonstrating the feasibility of the trawl groundfish fishery (23 out of 67 vessels with at least one trawl landing during the four year qualifying period will not qualify, Table 7-29b).<sup>1/</sup> To provide an exception for what appears to be primarily a case of better economic opportunity in other fisheries would appear to be unwarranted and would open the door for vessel owners in many other fisheries to argue their qualification on the same basis. Since permits are not area specific, nonqualifying vessel owners who wish to enter the fishery will have opportunity to purchase permits if they desire to enter the fishery at a later date.*

#### Gear Specific Issues

5. Eliminate the need to include fixed gear in the limited entry plan by undertaking sablefish management measures which would provide regional quotas and year round fishing opportunity (the specifics of this approach are outlined in the letter). A number of arguments were presented in support of the proposal. The arguments related to safety, enforcement, utilization, marketing gluts and allowing a larger number of vessels to participate. (Half Moon Bay Fishermen's Marketing Association)

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1/ Due to a dataprocessing error, Table A-8 of an analysis mailed to the public in July 1991, incorrectly identified the number of nonqualifying trawlers as 24 out of 49.

*While there may be other management measures which improve fishery conditions for a particular group, without a limited entry program efforts to implement these measures will be frustrated by an influx of new entrants encouraged by the improved fishery conditions. Thus such measures as suggested may be complementary but cannot substitute for a limited entry program.*

6. Rather than having permits, restrict vessels using net gear. (Ashwin)

*For most species (sablefish being the primary exception) status quo management restrictions generally affect net gear, i.e. trip limits and quotas primarily affect the trawl fishery. The only net gear which is generally not restricted by current measures may be gill net.*

7. Drop the "no salmon" provision. Some vessels set longline on the way out to salmon troll and retrieve the set on returning. The groundfish catch from these vessels may be legitimate longline catch, but salmon were also landed. (Citizens Against Limited Entry)

*Drop the "no salmon" provision which prevents delivery tickets with salmon on them from counting toward fulfillment of the MLR. Salmon fishermen in northern California and southern Oregon have been hit hard by recent years of low abundance and decreased allocation. As a response, many salmon vessels have become dependent on bottomfish bycatch when fishing for salmon. The "no salmon" provision prevents vessels from diversifying into longline gear. (Del Norte Fishermen's Marketing Association)*

*Several difficulties have arisen with regard to the identification of trips made with longline gear as opposed to other hook-and-line gears. It is illegal to catch salmon with longline gear. Therefore, a trip which is coded as longline or identified as a possible longline trip but has salmon is either miscoded, misidentified, or an illegal landing. Such trips should not be counted toward the MLR. This is not intended to discriminate against salmon fishermen, but to distinguish trips made with longline gear from trips made with other hook-and-line gear. Because troll gear is exempted gear, salmon trollers would continue to be able to land bottomfish bycatch. Any properly coded longline landings over 500 pounds made by vessels that also fished for salmon would be counted toward meeting the MLR. Salmon fishermen not qualifying for permits may purchase permits to enter the fishery like any other new entrant.*

8. Provide a specific exception or another gear endorsement to allow those who met the MLR with rod and reel gear to participate in the limited access fishery. (Small Boat Commercial Salmon Fishermen's Association)

*While the most powerful gears on the coast would be limited, there may be vessels using other gears which have landings equal to that of vessels using the gears included under the program. However, vessels using nonlimited entry gear have been exempted from having a permit and are allowed to continue to participate in the open access fishery. If representatives from these gear groups come forward and request the gear group as a whole be included under the limited entry program, this may be considered by the Council as part of a future amendment. Also, see the response to comment 38.*

9. Ban gill nets as part of the program. (Koblick)

*The goals and objectives for limited entry are not to ban a particular gear but reduce investment in additional fishing capital.*

10. Consider a gear prohibition inside three miles sufficiently extensive to warrant the granting of permits to vessels using the prohibited gear. In the current program, it is unclear as to how extensive the prohibition on a gear must be in order to qualify vessels using a prohibited gear for provisional "A" endorsements. For many, grounds inside three miles are the traditional fishing grounds. (McCeney)

Require a gear prohibition be effective in the exclusive economic zone (EEZ) in order to trigger provisions for prohibited gears. Require a vessel be documented in order to qualify under the prohibited gear provision. (Schock)

*Once the extent of the California gill net ban is established, the NMFS issuing authority will have to make a determination as to whether or not the ban is sufficiently extensive to warrant the application of provisions for banned gears. The requirements for documentation will be the same as applies to any vessel that qualifies with groundfish trawl, longline, or fishpot gear.*

#### Small Vessel/Large Vessel Issues

11. Allow fishermen using longline gear to fish without a permit with a 1,000 pound daily maximum and a twice a week allowance of 2,000 pounds. All fish caught over the limits should be landed and profits put into a special fund for research and regulation. This would allow small fishermen without a major impact on the resource to stay in the fishery. (Plourd)

Exempt vessels landing under 300 pounds of groundfish per trip. (Reeves)

Allow vessels a limited catch per day using ground tackle or allow use of an established number of hooks without needing to have a permit. (Stagnaro)

Exempt those using less than 5,000 hooks. (Patana)

Create a separate classification with lower landing requirements for vessels under 26 feet in length which do not use power equipment to retrieve longline, use fewer than 400 hooks or 10 traps, and make only one day trips. These vessels deal in quality and unique markets. Live fish caught in traps bring them \$6.00 per pound. (Tavasieff)

*These comments reflect a general interest in special consideration and exemptions for small vessels. An exemption for vessels using under a certain number of hooks was considered but rejected as this type of an exemption would be too difficult to enforce. However, in response to these requests the Council established an open access opportunity for small producers using fishpot and longline gear. The open access fishery for these small producers will be managed with the goal of providing year round fishing opportunity while maintaining the landings of these vessels in line with historic landings levels. This goal will likely mean fairly restrictive trip limits. At the time the open access fishery was created, the MLRs were altered to make it more difficult for small producers to qualify for "A" endorsements, i.e. a condition was added to the MLRs requiring that a landing be greater than 500 pounds in order to count as a day of landing in determining whether a vessel met the MLR.*

12. Limit the gear on large longliners. (Patana, Tarr)

*Because of difficult enforcement, measures which would limit amount of line gear on board have been rejected as a means of restricting capacity.*

#### Alternative Qualifying Requirements

13. Grant exemptions to those who fished 20,000 pounds per year for 5 of the last 8 years (January 1, 1983 through December 31, 1990) and are longline vessels less than 45 feet in length or trawl vessels less than 50 feet in length. Annual landings of 20,000 pounds should be required to retain the exemption. Either a lease holder or the vessel owner can be exempted, but not both, from the same vessel (some individuals have had their vessels held under the names of others to satisfy lending institution requirements). The exemption would be for the person, but could be sold with the vessel. The gill net ban may result in the availability of a large biomass of rockfish for exploitation. Provisions should be made so that gears such as longline and trawl gear can exploit this biomass. Longline gear can be very selective and neither of these gears has significant bird or marine mammal bycatch. (New)

*The type of exemption suggested would essentially be another type of permit, i.e. a vessel's qualification for the exemption would be established based on its fishing history and qualified vessels would be permitted to fish. Since the MLRs would have to be increased so that the program would still meet targets for numbers of permits to be issued, the result of the exemption would be that different groups of persons would qualify and not qualify. It is not apparent that the suggested set of requirements necessarily has more merit than the set selected by the Council. Annual landing requirements are not part of the Council's plan (except with respect to provisional "A" endorsements) because they encourage effort and thus run counter to the objectives of the plan. The Council chose to issue permits to vessel owners rather than lease holders because these are the individuals whose capital would be diminished in value if they did not hold a permit for their vessel. If the gill net ban is sufficiently extensive to result in the creation of a large unexploited biomass, then it would be likely that provisions allowing the issuance of endorsements to prohibited gears would come into effect. These vessel may then be able to exploit the surplus biomass with limited entry gear. If at some time there is insufficient capacity to exploit a population in a given area, the Council may amend the plan to issue additional permits (these permits could be restricted to a specific area).*

14. Create qualifying requirements which take into consideration years of working in the fishery as an owner. (Merlo)

*In determining the qualifying criteria, the Council chose to consider current vessel ownership rather than past ownership because current owners are the individuals whose capital would be diminished in value if they did not hold a permit for their vessel. Historic involvement and dependence on the fishery is taken into account through the record of the vessel owned.*

15. Extend the qualification window to the day of enactment. (Half Moon Bay Fisherman's Marketing Association)

*Notice of the August 1, 1988 qualification cutoff date was published in the Council newsletter, major trade magazines, fishery association newsletters, and the Federal Register. Moreover, the original cutoff date was July 11, 1987. This date was publicized in all the above listed media except the*

*Federal Register* (it was because of notice was not published in the *Federal Register* that the Council moved the cutoff date back one year). The Council believes movement of the cutoff date to day of enactment is not warranted given the widespread publication of both the original cutoff date and the later date which was finally adopted, and particularly in consideration of the one year lag between the two dates. During that one year lag there were ample sources of information, including other fishermen, from which groundfish fishermen monitoring their industry could have received information about the cutoff date. The purpose of the cutoff date is to prevent persons from entering the fishery only on the speculation that they might qualify for a valuable permit which might later be sold at a profit. Such actions would frustrate the purpose of the program and damage those who have a history of real dependence on the fishery.

16. Issue permits to anyone with one delivery in the last five years but make the permits nontransferable. After attrition takes its toll, permits would become transferable. (K. Bornstein)

*Different qualifying periods and landing requirements create different sets of gainers and losers. A plan which relies on attrition due to the nontransferability of permits would result in hidden transfers or place the greatest burden on those active groundfish fishermen retiring from the fishery who would have to sell their vessels for much less than their value. A plan such as the Council's, which uses higher MLRs to issue fewer permits at the start of the program, burdens those who will lose the least relative to their prior activity. Since these individuals were relatively inactive, their burden is relatively small.*

17. Allow anyone who met the MLR with a vessel during the window period to qualify for a permit with their present boat. (Weikal)

*Such a provision would allow one vessel to cause the generation of several permits. This could significantly decrease the effectiveness of the limited entry system. The notice on the August 1, 1988 cutoff date indicated that qualification would be based on the vessel's history.*

18. Allow vessels to qualify which made over 50 percent of their total income from groundfish during the window period. (Miller)

*This would generally be a more restrictive landing requirement than that adopted by the Council. After considering a range of possible MLRs the Council adopted an MLR which, in general, requires less dependence on the fishery in terms of proportion of income, but will allow more combination vessels to qualify. These combination vessels may rely on groundfish for a relatively small but important segment of their income. The adopted MLRs also result in placement of small producing longline and fishpot vessels in a restrictive segment of the open access fishery, forcing their owners to displace a larger producing vessel if they wish to increase the production of their operation. The Council's action represents a different balancing of equity considerations.*

19. Factor a veterans preference into the program. (Koblick)

*Landing requirements were based on vessel activity irrespective of the person(s) owning the vessel, i.e. no personal attribute of any owner was considered. The government has set up other programs which may benefit veterans in the acquisition of wealth and capital. This program only considers the activities undertaken with the capital once it is owned.*

## Open Access Allocation and Management

20. Take account of the fact that while the fleet is to be divided into limited and open access fisheries according to type of gear used, data to accurately distinguish historical use between limited longline gears and open access hook-and-line gears is not available. (Malone)

*After permits are issued and issues regarding gear used resolved through an appeals board, vessel identification numbers can be used to distinguish the catch history of permit vs. non-permit recipients.*

21. Fully exclude exempted gears from any allocation restrictions or provide a guaranteed baseline allocation level for exempted gear. This baseline level should not be affected by stock reduction imposed allocations. Small boat commercial fishermen occupy a minor segment of the groundfish fishery but are sensitive to changes reducing their landings. Gear code problems on fish tickets make it improbable that a reliable historical landing value can be established for the commercial rod and reel fishery. As an exempted fishery with a minor impact on the overall fishery, any consideration of allocation within the fishery should be moot. However, it appears that catch restrictions could be imposed upon small boat fishermen as the result of stock reductions caused by the efficiency of large harvesters. (Small Boat Commercial Salmon Fishermen's Association)

*A guaranteed baseline level will be provided on the basis of window period landings by the exempted gears. However, this guaranteed allocation is established as a portion of the ABC and thus will be subject to reduction if stocks are fished to below MSY levels. Effective Council management should prevent stocks from being reduced below MSY biomass levels, thus the efficiency of large harvesters should not result in reductions of ABC. As mentioned in response to comment 20, once permits are issued, it should be possible to sort out a majority of the gear code problems. Catch restrictions for the open access fishery will likely be necessary and will become more restrictive if the open access fleet size increases or effort increases.*

22. Do not create quotas for exempted gears as they are the least wasteful and command the highest market prices. If annual quotas are imposed on rockfish it will generate the usual greed resulting in increased effort, quota attainment and lack of availability of the product on markets. (McMaster)

*Regardless of the virtues of a particular gear, management measures such as quotas are required to conserve the resource. Quotas result in increased intensity of effort only when the fishery is managed as an "Olympic system" i.e. fishing is allowed relatively unrestricted until the full quota is taken and then the fishery is shut down or cutback to minimal levels. It is the Council's intent to manage the open access fishery as a year round fishery.*

23. In addition to the consideration of historic catch, consider prioritizing gear types for purposes of allocation based on gear wastefulness and future ability of gears to harvest the resource. This would better achieve the Council's stated goals of increasing net returns from the fishery and reducing bycatch and waste. Why is historic catch the only criteria used to determine allocations between limited and open access gears? Has historic catch been achieved in a desirable manner, or has it resulted in lost opportunity due to the predominance of nonselective and wasteful trawl gear? The Council's goals of reducing waste and promoting

long-term stability would be better served by limiting entry to trawl gears and to fisheries where serious gear conflicts are occurring. (Malone)

Consider the negative impacts of trawl gear on fish stocks and habitat and favor those gears that are more size and species selective. (Tarr)

*The proposed license limitation system covers trawl gear and two other major gears with which there are allocation conflicts (longline and pot). Permit issuance based on catch, i.e. historic participation, is least disruptive to the current fishery. Gear wastefulness is, in part, a function of management and can be reduced with the development of alternative management measures. This license limitation program is anticipated to aid in development of effective alternative management measures and reduce wastage induced by the current types of management measures employed. See the response to comment 5 regarding the difficulty of improving the fishery through reduced waste absent a limited entry system. The objective of this amendment is to limit effort, not to favor certain gears.*

24. The historic catch levels of vessels which received "B" endorsements should count toward the open access quota when the endorsements expire. (Half Moon Bay Fishermans Marketing Association)

Introduction of "B" endorsement holders into the open access fishery will most severely impact the open access fishery in the event of quotas within the open access fishery without allocation by gear type. (Small Boat Commercial Salmon Fishermen's Association)

*The plan was modified to count the historic catch of vessels receiving "B" endorsements toward the open access quota when longline and fishpot endorsements expire. This should reduce the impact of the "B" endorsement recipients on the open access fisheries when the "B" endorsements expire. This was not done for trawl vessels because trawl gear may not be used in the open access fishery.*

25. It is important to maintain a "point of access" to the groundfish fishery for young fishermen, either by maintaining a viable open access fishery or establishing a number of limited entry permits which in and of themselves have limited economic value. (Malone)

*The Council expects that the open access fishery will remain viable. If there is a major influx of new entrants into the open access fishery, then it may be necessary to bring that fishery under the limited access system. Many of the gear types which would participate in the open access fishery are restricted through other limited entry programs, e.g. salmon trollers, Oregon shrimp vessels, and California gill net vessels. However, it is likely that new more powerful open access gears will be designed by those not receiving permits. This would likely result in declining trip limits and hence declining incentive for the design and use of the more powerful open access gears. Also, see response to comment 34.*

26. If the Council proceeds with historic catch as a basis for allocation it should reflect area variations and not a coast-wide average. (Malone)

*The decision to apply percentages on a coast-wide or area basis is left to the implementation phase of the program. Additional analysis will be conducted at that time and additional public testimony taken.*

#### Vessel Size

27. Allow upgrades of ten feet in size or allow no upgrades at all. The five foot limit is unfair to smaller vessels. Larger vessels can add on five feet, widen their boats or increase horsepower. (Warnock)

*In terms of percent increase in capacity, a five foot increase allows a greater percent increase for small vessels than for large vessels. If larger vessels have more opportunity to increase capacity through widening the vessel or increasing horsepower than small vessels, allowing up to a ten foot increase would create even larger capacity vessels and further frustrate achievement of the Council's goals and objectives.*

28. Limit the length of trawl vessels because of the damage they do to the ecosystem. (Koblick)

*It has not yet been determined whether or not trawl vessels do significant damage to the ecosystem, therefore no discriminatory actions are warranted. Trawl vessels are limited in growth in the same way that other vessels are limited. Additionally, if a trawl permit is transferred to a vessel more than five feet less in length than the length endorsed on the permit, the length of the permit is permanently reduced (this limit for drag vessels is applied not because of concern over habitat damage but because trawl vessels of different size target on different species of fish).*

29. Provide more flexibility for increasing the size of vessel used. (Reamey)

*In order to allow owners some flexibility in replacing vessels and fulfilling safety requirements without losing capacity, the Council has specified that vessel size should be allowed to increase up to five feet. Allowing further increases in size would allow even more capacity into the fishery and be counter to the limited entry objectives. Statistics for growth in the Alaskan Pacific halibut fishery indicate that, given the incentive for increased participation, vessels will tend to increase in both numbers and relative size (see Chapter 5).*

#### Construction and Conversion

30. Revise the conversion investment criteria downward. Establish guidelines and have the review board hear each controversial case, relying mostly on intent being proved by action within a window after the September 30, 1990 date. (Schock)

*The conversion criteria has been revised downward to \$10,000. The review board will hear controversial cases at the request of the fisherman provided an appeal is involved. The window for proving intent is a three year window occurring after completion of conversion rather than after September 30, 1990. To use the 1990 date may allow more fishermen to qualify who by their earlier actions demonstrated a lack of intent to depend significantly on the fishery.*

31. Provide exemptions for vessels under construction and allow a reasonable period of time for vessel completion, up to one and half years from time of rule making. (Mulkey)

The September 30, 1990 construction cutoff date should be set back three years. This date unfairly discriminates in favor of fishermen who were able and/or willing to incur higher debt loads. Those who construct or convert vessels over a longer period of time in order to incur smaller debt loads are more inclined to act responsibly with regard to the resource because of the small debt load and should be allowed to qualify. (Tarr)

*Special provisions have been made to allow vessels under construction to qualify if they enter and participate in the fishery directly after construction is completed. The announced August 1, 1988 cutoff date gave vessel owners who began construction after that date sufficient warning that their vessel may not initially qualify for a permit. No reason is seen for changing that cutoff date to the date of rulemaking for vessels under construction. The construction cutoff date (September 30, 1990) would allow nearly two years and two months for completion of a vessel on which construction was begun August 1, 1988. In general, the Council and its advisory committees believed that absent extenuating circumstances, this was a sufficient amount of time to complete construction of a vessel. The proposed regulations allow consideration of extenuating circumstances outside the control of the vessel owner as reasons for granting exceptions.*

#### Transfers

32. Modify the amendment so that it will track state law with respect to the expectations of buyers and sellers as to what is being conveyed when a vessel is sold. The commenter is concerned that his rights to enter the fishery were sold when he sold his vessel. (Stokes for Hartzell)

*When notice of the cutoff date was publicized, it was made clear that permits would be issued on the basis of a vessel history rather than personal history. The rationale for this provision is explained in Chapter 4 of the SEIS.*

33. Make permits nontransferable until the necessary biological data on groundfish populations and associated marine organisms have been gathered and evaluated to discern if the resources can withstand additional fishing pressure. (California Assemblywoman Allen)

*Target harvest levels remain the same with or without limited entry. Making permits nontransferable would not aid in conservation efforts.*

34. Permit costs may be very high. Restrict permit costs to a certain amount. (Ashwin, Malone)

*A restriction on permit prices would result in a number of permits demanded much larger than the number supplied. As a consequence, transaction payments would probably be hidden or permits sold primarily on the basis of friendship or kinship.*

#### Miscellaneous

35. Specify, in Section 14.2.4 of the amendment, that only entities qualified to own U.S. documented fishing vessels should be allowed to qualify for permits. An undocumented vessel may be foreign owned. (Schock)

*The proposed regulations carrying out the Council's intent specify " Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold . . . a limited entry permit."*

36. In case it is necessary, create a way to get out of the program without incurring the major costs of a buy-back program. (Parrish)

*Section 14.4.1 of the adopted amendment provides the Council with the flexibility needed to move out of the program if necessary. The MFCMA under which this amendment is being implemented provides that the Council and Secretary of Commerce may amend an FMP as necessary to conserve and manage the fishery.*

37. Pursue elimination of the Capital Construction Fund. (McMullen)

*While elimination of the Capital Construction Fund would help reduce the incentive for overbuilding capacity in the fishery, lobbying for the elimination of such a fund is not within the scope of the Council's authorized activities. Even with elimination of the program the potential still exists for incentives to arise which induce more vessels to be constructed for entry into the fishery.*

38. A high capacity permit should be divisible if the multiple permits created are used within a Council certified local limited entry program. Sections 14.2.10 and 14.3.1.4 of the amendment should be modified to allow this. (Half Moon Bay Fishermans Marketing Association)

*Such a proposal would be in the realm of possibilities for a future plan amendment and is not eliminated as a possibility by adoption of the license limitation program as it now stands. It is not within the range of options available to the Council at the time of final consideration of the amendment. It has different costs and benefits than those of the proposal considered here. The industry has been in a long period of uncertainty as the Council has moved through the process of considering limited entry. At this point, there are greater benefits to industry from moving ahead with consideration of this plan than from further delay to consider this suggestion.*

#### Description of Commenter Situations

Answers provided are general responses to the letters received. Additional factors not disclosed in the letters may also affect the situation.

#### Late Entry

39. After working in the fishery his entire life, the commenter purchased a vessel in 1989 and is not likely to qualify. (Merlo)

*Individuals investing in vessels after August 1, 1988 were on notice that they may not receive access rights in the fishery if this limited entry system were implemented. Individuals not initially receiving permits can enter the fishery through purchase of a permit. See also the response to comment 15.*

40. The commenter started fishing as a crewman in 1961 and became a captain in 1969. In 1984, he purchased a trawler and converted it to salmon fishing. Had he not converted to salmon,

he would most likely have qualified for a "A" endorsement under the high MLR. He fishes salmon six months of the year and trawls the remainder of the year. (Slostad)

*The landing requirement for trawl vessels is relatively low (only nine days of landings over a 4 year period). This low landing requirement was intended to allow combination vessels which had some degree of dependence on the fishery to qualify. Vessels which did not have nine landings over a four year period are not considered to be significantly dependent on the fishery.*

41. The commenter has invested \$1.2 million in a black cod vessel which first began fishing in April 1991. They will be forced out of business if no alternative is provided for them. (Kace Trading Inc.)

*See response to comment 39.*

42. The commenter had participated in other fisheries for twenty years but is being excluded because he did not participate in the groundfish fishery. If the salmon fishery were viable the commenter would not be forced into groundfish. (Irwin)

*See response to comment 39.*

#### Construction or Conversion

43. The commenter lost his vessel and began construction of a replacement vessel, both events occurring during the window period. The construction was funded under the Capital Construction Fund. The new vessel was to be launched in June 1991. The commenter wished to make certain that a replacement vessel would not be subject to the construction deadline. (Thomas)

*A two year limit on replacement of a vessel in the adopted alternative might prevent the commenter from receiving a permit. An individual dependent on the fishery would likely replace his or her vessel within the two year time period.*

44. After 40 years in the industry, the commenter purchased a 65 foot hull. The seller had started the hull as a backyard project in 1973. Construction on the vessel began in 1980 and the boat was completed and documents issued November 15, 1988. (Commenter provided a copy of a builder's certificate dated May 8, 1990.) (Richter)

*If the commenter owned the hull prior to August 1, 1988, had at least two groundfish landings with a limited entry gear in each of three consecutive 365 day periods commencing with its first landing of any species anywhere, it is likely the commenter will qualify for a permit.*

45. The commenter laid a hull prior to August 1, 1988. The boat yard in East Palo Alto where the vessel was being built suffered major damage from the 1989 earthquake and had to be relocated to Redwood City. This delayed completion of the vessel until after September 30, 1990. (Yoshizumi)

*If the reason for delay in completion of construction is outside of the control of the vessel owner, exceptions may be made to the September 30, 1990 construction cutoff date.*

46. The commenter owns one vessel and has a second 67 foot vessel on which construction was begun in 1987. Property and a building were purchased in which to build the vessel and he is one-third the way toward completion (as of February 1991). Investment in the vessel alone is \$150,000. Work on the vessel is limited to periods of nonfishing and he anticipates that he is two to three years away from completion. (Mulkey)

*Vessels qualifying under the construction provisions were to have been completed by September 30, 1990. Delays outside of the control of the vessel owner may be considered as reason for not completing construction by this date. The Council felt that two years from the cutoff date was a sufficient period to allow individuals to complete construction of their vessels.*

47. The commenter is currently (as of November 1990) building a boat to fish longline gear and was just informed of the proposed license limitation system. (Lester)

*See response to comment 39.*

48. The commenter started building a drag vessel in 1980 using his life savings. The vessel was launched in November 1989. Shortly thereafter, his wife became ill and he spent his time with her. He had hoped to start fishing but will not qualify because his fishing did not start prior to September 30, 1990. (Green)

*Delays in construction outside of the control of the vessel owner may be considered as reason for granting extensions for construction, however, sickness and injury must generally involve the vessel owner if it is to be used as a reason for obtaining a hardship exemption. The rationale for not extending this beyond the vessel owner is that the owner is generally in a position to hire a captain to fish the vessel if he or she were dependent on the vessel for income but unable to fish it.*

49. The commenter purchased a salmon troller in October 1987 and began converting it to a limited entry gear. When he learned of the limited entry proposal and that a single landing might qualify him, he went out and made one landing to preserve his rights. In December 1988 he was involved in an automobile accident and because of his need for knee surgery, was unable to fish until the summer of 1989 and thereafter fished only marginally for salmon. In February of 1991 he had the surgery and is now able to fish for groundfish but believes he may have lost his opportunity to do so. (Ashwin)

*Exceptions can be made to the provisional "A" endorsement upgrade criteria for injury to a vessel owner. A decision would have to be made by the issuing authority as to whether or not the conditions in this case warrant such an exception.*

50. The commenter purchased a poorly equipped and maintained vessel and invested over \$83,000 between 1985 and 1988 on conversion and gear so it could operate as a small dragger. He was able to continue to participate in other fisheries during the conversion, and did so, paying for the conversion as he went and staying out of debt. One trip was made prior to the close of the window period (June 1988). In 1989 twenty two trips were made beginning in July. The commenter provided extensive documentation and sought the Council's agreement that he should qualify. (Burke)

*The end of conversion and beginning of the upgrade period is defined as the first landing of any species anywhere. Since the commenter continued to fish for other species, his upgrade period was considered to have begun after the first structural modification to his vessel which was necessary for its use of trawl gear. The first groundfish landing occurred in June of 1988. Even if that landing was the first landing after the structural modification, two landings are required in each year of the qualifying period. The commenter's next landing did not occur until July of 1989, over one year after the first landing. Therefore the upgrade requirements were not met and no permit will be issued for this vessel on the basis of its trawl landings. The commenter does have the option of purchasing a permit. The rationale for the conversion provisions is explained in Chapter 4 of the SEIS.*

#### Vessel Loss

51. The commenter's 48 foot vessel sank in April 1987. This vessel was a shrimp and groundfish trawler and would qualify for the fishery. In November 1987, a 75 foot vessel was purchased to replace the lost vessel. No information was available at that time on replacing lost vessels under the proposed limited entry plan. The replacement vessel arrived from Texas in March 1988. Modifications were made which allowed the vessel to begin shrimping but not groundfish fishing. At the end of the 1989 shrimp season, further modifications were made to allow the vessel to groundfish trawl; however, the net reel was not delivered on time to allow the vessel to participate in the 1989 groundfish fishery. The vessel did not participate in groundfish fishery in 1990 because of economic and market reasons. (Stolz)

*This vessel would probably not qualify because of failure to meet the two year limit on replacement of a lost vessel. If an appeal were filed with the Regional Director, the review board (if requested by the applicant) would have to determine whether the reasons for delay in entering the fishery with the replacement vessel warranted issuance of a permit. Delay in delivery of the net reels might result in an extension through 1990, however, the reasons for not entering the fishery in 1990 (economic and market conditions) are generally not considered hardship conditions and therefore would not likely be accepted. If an appeal were successful, then the owner of the lost vessel would have the option of receiving a permit with an "A" endorsement and a size endorsement for the size of the lost vessel or a permit with a provisional "A" endorsement and a size endorsement for the size of the replacement vessel.*

52. The commenter has been a fisherman for 25 years and owned his own salmon/tuna/crab vessels through mid-1980. In 1979-1980, a 70 foot vessel was built for \$750,000 fully equipped for midwater and bottom fishing. The vessel was lost prior to its maiden voyage. Ensuing litigation lasted three years and the vessel was sold to cover mortgage payments and lawyers fees. The vessel now fishes in Alaska. Over the last 10 years, the commenter has been the captain of another vessel fishing in the groundfish fishery. In June 1991, a 44.4 foot vessel was purchased which he would like to equip for groundfish. (Beasley)

*There are a number of reasons that many potential participants were not active during the window period, however, the response to comment 39 applies here as well.*

53. The commenter purchased one black cod vessel in 1978 and another in 1981. One of these was sold in 1983 and the other was totally lost to a fire in 1991. They are now trying to procure another vessel. (Pacific Ocean Seafoods)

*Provisions have been made for lost vessels which would have qualified for a permit. If the vessel lost in a fire qualified for a permit, the commenter is likely to receive a permit for a replacement vessel, provided conditions for replacement of a lost vessel are met.*

#### Vessel Sale

54. The commenter would have qualified with a vessel, however, it has been sold. (Weikal)

*Past ownership of a vessel with a qualifying history was rejected as a possible qualification criteria in order to limit the number of permits created from one vessel. One of the primary principles followed in designing the limited entry program was that a single vessel should not give rise to more than one permit. The purchaser of the vessel with the qualifying history would be granted a permit, as opposed to the seller, because the purchase price was based in part on the vessel's ability to catch groundfish.*

55. The commenters owned a 30 foot vessel that probably qualified, have since purchased a larger 50 foot vessel which will not qualify, and would now like to sell their 50 foot vessel and purchase a larger one. Their current boat is worthless without a permit. (Reamey)

*Vessels purchased part way through the window period may qualify an owner for an "A" endorsement if the provisional "A" upgrade criteria are met with the vessel. The response to comment 39 applies to any vessel transactions occurring after the window period. Replacement by larger vessels after September 30, 1990 (the approximate date the length restriction was announced) is not allowed to prevent increases in capacity.*

56. The commenters owned a vessel which fished salmon and rockfish in 1986. In the fall of 1988, this vessel was sold and a larger vessel purchased. In the fall of the following year, after purchase and installation of a gear hauler, about 60,000 pounds of groundfish were delivered. The commenters sought Council assurance that they would qualify. (Josephs)

*The commenter's investments and groundfish fishing activity with the vessel currently owned all occurred after the announcement of the August 1, 1988 cutoff date. They will not qualify for a permit. See response to comment 39.*

57. The commenter spent \$600,000 on a vessel that will not qualify. (Scarborough)

*See response to comment 39.*

#### Miscellaneous

58. The commenter has been experimenting for several years with groundtackle to develop a new market for live fish but will not qualify for a permit. Thousands of dollars have been invested in a truck, boat and gear. Also much time has been invested in experimentation. The volume of fish taken is minimal. (Stagnaro)

*If the commenter uses longline gear, provisions for an open access fishery (added just prior to the Council's final adoption of the program) would likely allow this vessel to continue to use the gear,*

*provided landings are small. If the commenter uses exempted gear, he would not be required to have a permit.*

Comments on Impacts of the Alternatives and Preference for Council Action

Conservation

59. The hook-and-line fleet should not be limited while allowing the use of habitat damaging roller gear. Limit gear instead of limiting entry. (Argetsinger, Barry, Chaffin, Merlo, M. Miller, Moss, Nungaray, Reeves, Rogers, Thime, Vrana, petition signed by 9, petition signed by 4)

A number of other conservation methods are available for saving fish (examples were given). (Merlo)

Biological understanding and proper conservation measures (including time and area closures) will address the problems. (Weikal)

Instead of implementing a plan, charge trawlers with their bycatch. They would quickly redesign their nets so that wastage would not occur. (Nungaray)

Conservation measures need to be taken instead of limited entry. (Murray)

Quotas already exist, limited entry is not necessary. (California State Senator Kopp, San Mateo County Harbor District)

*These comments all speak to conservation measures as a substitute for limited entry. Conservation measures which reduce wastage or increase the future sustainable yield levels will not address the same problems addressed by limited entry. Absent limited entry, any regulations which increase allowable catch for a portion of the fleet will just encourage more entry into the fishery. Eventually there will once again be too many vessels relative to the allowable catch.*

60. Limited entry is needed to protect stocks. (California Assemblywoman Allen)

*There are measures currently at the Council's disposal which, combined with measures such as an observer program, would allow it to conserve the resource. Consideration of Amendment 6 is primarily intended to determine whether there might be a more desirable mix of social and economic impacts from management under limited entry. While helpful in conservation, limited entry is not necessary to conserve the fishery resource and may only change the mix of management measures the Council uses to solve the conservation problem.*

61. Limited entry is not needed to protect stocks and will not solve the conservation problem. (Marchand, Weikal, PCFFA, Ashwin)

*See response to comments 59 and 60.*

62. A groundfish license limitation program would cause vessels in other fisheries to continue to fish depleted stocks. (Degner)

*Conservation and management problems in other fisheries may be greater when there is no opportunity to redirect effort to the groundfish fishery. On the other hand, a groundfish management regime which encourages investment in more vessels for the fishery creates potential effort which may transfer to other fisheries in years in which there is a downturn in the groundfish fishery. License limitation allows a vessel to move into the groundfish fishery if the potential entrant is willing to pay for the displacement of a vessel already in the fishery through the purchase of a permit.*

### Flexibility and Stability

63. Flexibility to move between fisheries is needed by trawlers less than 58 feet in length. Ability to be flexible and move between species keeps the industry healthy during hard times. Limited entry prevents this. (Degner)

The Amendment 6 limited entry program will create a tremendous and permanent hardship on fishermen because it removes the opportunity for the fisherman to remain flexible and versatile in several fisheries. During the original window period, there were poor groundfish marketing conditions and other more lucrative fisheries. Many people who have participated in groundfish either prior to or after the window period took part in these other fisheries during that period of time. Thus, limited entry will create long-term instability throughout the industry and communities. (Half Moon Bay Fisherman's Marketing Association)

*See response to comment 62. Additionally, note that stability in the groundfish fishery would be increased. New entrants would have to displace another vessel rather than just claiming a portion of their catch in open access competition. The MLRs were set low enough that individuals who regularly rely on the fishery, even as part of a mix of species, should be able to qualify. Information on cross participation between fisheries shows that qualifying vessels have more cross participation than nonqualifying vessels (See Chapter 7). With respect to participation in other fisheries before and after the window period, see response to comment 4.*

64. Stability will result from limitation on new vessels coming into the fishery. (McMullen)

*Stability in the groundfish fishery would be increased. New entrants would have to displace another vessel rather than just claiming a portion of their catch in open access competition.*

65. Cutbacks in the salmon fishery make the groundfish fishery very important for financial survival. (Merlo)

*This is a specific example of the previous arguments on flexibility. The same responses apply.*

66. Some individuals argue that limited entry will eliminate flexibility. However, it should be noted that while some fisheries have natural seasons, and rotating among them is necessary to maintain year-round employment of the vessel, the groundfish fishery is a year-round fishery. Flexibility has not been necessary for a viable business. However, recent restrictions have caused groundfish fishermen to spend more time in other fisheries. (Young)

*For many trawlers, the groundfish fishery is a year-round fishery. For large non-trawl gear vessels it has become more seasonal in recent years. Under license limitation, it is likely that permits will*

end up in the hands of vessel owners which participate for longer periods rather than those which move into groundfish between other fisheries.

67. There is no option for combination vessels. (Slostad)

*The adopted MLR requires that vessels make at most 9 trips over the 4 year window period. This is an average of two or three trips a year. While no options specifically address combination vessels, all options would require only a small number of landings. Combination vessels that consistently include groundfish in their fishing cycles should qualify.*

68. The plan is inflexible and fails to consider changes in fishing gear technology. (PCFFA)

*Changes in fishing gear technology are addressed in Chapter 7 of the SEIS. If necessary, the Council may amend the plan to address these changes.*

#### Costs

69. The plan will be too expensive and is not justified. (Marchand, Murray, Patana, and Citizens Against Limited Entry)

*Costs are estimated in the draft SEIS and a revised estimate is contained in the additional analysis produced in July. These costs are expected to average under \$500 per vessel at initial issuance and after 1996 annual renewal may run between \$300 and \$400 per year. The Council believes this to be a reasonable amount to pay for the benefits to be derived from the program.*

#### Effectiveness

70. The proposal will not do what proponents want. Factory vessels will not be kept out of the fishery and management restrictions will not be lessened. (Citizens Against Limited Entry)

There are too many vessels already in the fishery for limited entry. (Murray)

While in the salmon limited entry system there has been some attrition, the vessels that left were not producers. Therefore, the system has been ineffective. (Citizens Against Limited Entry)

*The SEIS indicates that, at best, the number of "A" endorsements initially issued on the basis of the MLRs may be similar to the number of vessels active in 1987 (with the exception of trawl vessels for which a somewhat greater number of "A" endorsements will be issued). Additional vessels would qualify on the basis of other provisions (e.g. construction and conversion provisions). It is correct that those leaving the fishery will likely be lower producers. Determination of whether the system will be effective depends on what would have happened in the absence of a limited entry system. The SEIS provides information on fishery trends and leaves it to the reviewer to evaluate the probability of different outcomes in the absence of limited entry. The Council has determined that without limited entry it is reasonable to expect that changing fishery conditions may lead to an increase in the number of vessels active in the fishery. Factory trawlers may enter the fishery through the purchase and combination of permits or on a temporary basis through qualification for designated species "B" endorsements.*

71. Effort will be encouraged as vessels must catch fish in order to maintain their endorsements. (Citizens Against Limited Entry)

*Use requirements have generally been avoided to prevent this problem. At most, a vessel may be required to make at least two trips in each of its first three years in the fishery. For many of the vessels in this category, the time period in which these trips would have to be made has already passed. Therefore, the amount of additional effort encouraged by these provisions is expected to be very small.*

72. Bycatch and wastage problems will not be solved. (Citizens Against Limited Entry)

Without license limitation, trip limits will grow to be less effective and discards result. (Cooper)

*Limited entry alone will not solve bycatch and wastage problems, however, if vessel numbers would have increased in the absence of limited entry, the presence of limited entry will have made solution of these problems easier.*

73. There will be no cap on the effort and effectiveness of remaining vessels. (Citizens Against Limited Entry)

*There will be a potential for increased capacity under limited entry through vessels becoming more productive and the transfer of permits from less productive to more productive vessel owners. If effort continues to increase, what will the Council do? If this leads to an ITQ system, how will ITQs be allocated? (Deach)*

*Despite restrictions on vessel length, there would continue to be a potential for remaining vessels to increase their capacity under license limitation. However, under trip limit management their incentive for increasing capacity is much reduced. If faced with increased capacity, the Council would continue to rely on other management measures currently at its disposal. The Council is moving toward consideration of an ITQ system as a possible next step in its limited entry program. The method of allocation under an ITQ system would likely include criteria based on historical participation. The specifics would be developed as the program is considered. The implementation of a buy-back program is another alternative for reducing capacity.*

74. Limited entry will add more boats to the fleet. History has shown that limited entry plans do not stop the growth of the fleet (e.g., West Coast troll fleets). (Marchand)

*While the effectiveness of the West Coast troll limited entry systems may be debated, there are fewer active vessels and fewer permits than were present when the system was implemented. With owners qualifying under special circumstance (e.g. construction, conversion, etc.) there may be somewhat more "A" endorsements issued than there have been vessels active in any one year, allowing an increase in the number of vessels active in the fishery as compared to any given year during the window period. Estimating the number of vessels which might participate in the future is difficult. After reviewing the available evidence, the Council has determined that without limited entry it is reasonable to expect that changing fishery conditions related to profit or the timing of opportunity in other fisheries may lead to an increase in the number of vessels active in the fishery above that which would be allowed under the permit system.*

75. The March 1991 actions on limited entry fall considerably short of reaching the goals for limited entry. They will cause the plan to be ineffective in establishing meaningful fleet reduction or limited entry. (Nine signatures from members of trawl, longline and crew organizations)

*The comment refers to the briefly considered provisions which would have caused "B" endorsements to expire only on change in ownership of the vessel (These provisions were not adopted by the Council). The provisions would have made it very difficult to establish an effective limited entry system. Another action considered was extension of the qualifying window period for "B" endorsements to 1991, while at the same time raising the "B" endorsement landing requirements to three trips. This action would probably have reduced the number of "B" endorsements issued for every gear except trawl. However, after considering the analysis and public comment, the Council chose to raise the "B" endorsement landing requirement but maintain the original four year window period.*

76. Recent increases in effort have been caused by the consideration of limited entry (McMaster)

*This is an effect typically caused by the discussion of limited entry. For this reason, at the July 1988 Council meeting, the Council set the August 1, 1988 cutoff date. Its action was intended to discourage this type of entry and prevent those who might enter on speculation from qualifying. Effort by individual vessels may still increase if vessel owners anticipate implementation of an ITQ system. However, a recently published control date (November 13, 1991) is expected to limit incentive for increased effort.*

77. A buy-back program will eventually help reduce excess capacity and lead to a more effective program. (Merlo)

*While the Council believes that the future of the fishery will be better with limited entry than without it, capacity reducing measures such a buy-back program or ITQs may increase the effectiveness of the program.*

78. When permits are combined based on capacity the resultant permit will have more capacity than the combined permit because it will be able to fish in more severe weather conditions. (Half Moon Bay Fisherman's Marketing Association)

*This is a factor which the Council should take into consideration when it develops the schedule which specifies the size of endorsement issued when permits with smaller endorsements are combined.*

79. When word about limited entry got out in the latter part of the 1980s, suddenly a lot of new draggers were built and these vessels will qualify. (Ashwin)

*Only those new vessels on which construction was begun before the August 1, 1988 cutoff should be able to qualify.*

#### Allocation Between Limited Entry and Exempted Gears

80. Allowable catch restrictions may be imposed on small boats as a result of stock reductions caused by more efficient gears. (Manners)

*This will only occur if the Council is unable to be effective in preventing stock biomasses from declining below optimum levels. To date, the Council appears to have been successful in maintaining optimal levels as best as can be determined.*

81. How will the Council allocate between the open and closed access gears? Will exempted gear and special interest allocations be taken off the total allocation? Or, will fixed gear exempt allocation be made from fixed gear limited entry allocation while non-fixed gear exempt allocations are made from non-fixed gear limited entry allocations? (Deach)

*Since the time of these questions, these issues have been addressed through modifications of the adopted license limitation program. See Section 14.2.2 of the program (appendix to this document).*

82. Recent entrants to the longline fishery and those with expired "B" endorsements are directed to the open access fishery. This will possibly result in a very unsatisfactory open access fishery from both the participant and management perspective. (Malone)

*Open access landings by longline and fishpot vessels as a group will be held to the window period landing levels of longline and fishpot vessels which did not receive permits. Those recent entrants and "B" endorsement recipients who wish to continue in the fishery have the option of either purchasing a permit and continuing to harvest at a higher level, or entering the open access fishery and fishing under the restricted trip limits. The remainder of the limited entry gears will be relatively unaffected by this group. Additionally, see the response to comment 24 regarding the expiration of "B" endorsements.*

#### Public Opinion

83. A clear majority of industry opposes limited entry. (Citizens Against Limited Entry)

*The Council initially indicated it would pursue limited entry only if industry supported it. While a slight majority of the industry surveyed opposed limited entry, the Council's SSC pointed out that the majority of industry might oppose any specific regulation it was asked about. The Council decided to act favorably on limited entry because of their judgement that net social and national economic benefits would be increased. Also, see comment 84.*

84. For most people support or opposition depends on whether they are included or excluded by the plan. Since the number of people excluded is far larger than the number included, the Council will likely hear far more testimony in opposition to the plan than in favor. (Young)

*This is a consideration which the Council took into account in considering testimony, however, the results of the survey conducted by the Council have a more scientific basis and indicated that those in opposition to the program only slightly outnumbered those in favor, at a .05 level of statistical significance.*

85. The survey results indicated that 80 percent of fishermen opposed limited entry. (Ashwin)

*Eighty percent of all fishermen opposed ITQs. License limitation found much greater acceptance.*

### Local Community Impacts

86. San Mateo County Harbor District would face severe economic hardship if the proposed regulations do not allow local fishing boat owners to continue to fish as they have in the past. These fishermen are dependent on groundfish. (San Mateo Harbor District)

*Fishermen from any area which have had some minimal amount of activity with a limited entry gear should qualify. Severe hardship would only occur if a significant portion of the fishermen in an area entered the fishery after the announced cutoff date or do not have proper landing records.*

### Small Business/Large Business Issues

87. Options should be open for small scale low impact fishermen. This would help address the needs of displaced salmon trollers. (Patana)

*Options adopted at the September 1991 Council meeting would allow small scale fishermen to use longline gear in an open access fishery.*

88. The plan is geared to protect the investments of the owners of large trawlers. The plan will cause small boat owners to quit because they cannot fish throughout the year. Small vessel owners will bear the brunt of a plan designed to solve problems created by larger vessels. (Nungaray)

*Permits will be issued to vessels of all sizes. The size of a vessel used with a permit can be increased only up to five feet. Therefore, permits should remain available for small vessels. There exists the possibility that permits for small vessels may be purchased and combined into permits for larger vessels. If the number of permits for small vessels was to substantially decrease, the Council could amend the plan and issue more permits for vessels in this size range and restrict those specially issued permits from being combined into permits for larger vessels. For the trawl and open access fisheries, provision of year round fishing opportunities will be a Council objective. The Council also tries to maintain a year round opportunity for small vessels in the nontrawl sablefish fishery.*

89. The plan favors those with a great deal of financial backing. Permits will be valued way above their original costs. (Nungaray)

*It seems likely that there will be periods in which permits are overvalued. However, a permit will be like other assets the fishermen owns and may serve as collateral against which the fisherman may acquire a loan for purchase.*

90. The 75 mt MLR for longline gear discriminates against small vessels. (Strom)

*A vessel may meet the MLR through numbers of days of landings or total pounds of landings. The numbers of days of landings option favors small vessels which do not stay out more than one day at a time (Note: The final options adopted by the Council reduced the tonnage MLR options by 50 percent resulting in a 37.5 mt MLR for longline gear.)*

91. Effort is being cut 25 percent on smaller size vessels and combination vessels which catch less than 40 percent of the fish. (Warnock)

Limited entry will displace small draggers. (Wright)

The SEIS shows that the greater impact of the high MLR option will be on smaller vessels. (Slostad, Warnock)

*There does appear to be a greater impact on small vessels, particularly fishpot vessels, when comparing the total number of vessels in the window period to the number meeting the high MLR (the large discrepancy for fishpot vessels may be an artifact of a gear coding problem). However, when comparing the number of permits to be issued for each size class to the number of vessels active in the size class for 1987, the impacts are fairly well distributed between size classes. The discrepancy between these comparisons may result from a higher degree of transience in smaller vessel size classes. Under limited entry, this movement in and out of the fishery by small vessels may be maintained from the sale or short term lease of permits. The Council's objective is to issue a mix of permits which will reflect the current mix of the fleet active over the period of a year (as compared to the August 1, 1988 cutoff date).*

92. There should be restrictions on larger vessels and multiple boat owners. (Warnock)

Ownership of permits should be limited to 1 or 2 per person and owners should be required to be actively engaged in harvest of the resource. (Malone)

*It was decided that concentration of permits would be controlled solely through antitrust provisions. Because multiple ownership of vessels currently exists in the fishery, enforcement would be difficult, there was little basis for choosing a number of permits to which an individual might be limited, and corporate structuring could frustrate the intent of the limits on concentration. All sizes of vessels are restricted by the size endorsements on the permits. Requirements for permit owner activity in the fishery were not adopted because with corporate, trust, etc. permit ownership it would be difficult to determine whether the permit "owner" is actively engaged in the fishery.*

#### Windfall Profits

93. A few will be enriched at the cost of many. (Degner)

*It is correct that initial "A" endorsement recipients will receive windfall profits. The profit revenues will come from those who subsequently enter the fishery through purchase of a permit which has an "A" endorsement. Under license limitation, there will be many who perceive a cost because they are no longer able to enter the fishery freely. However, without license limitation there would also be widespread costs to many already in the fishery if vessel numbers increase.*

#### Young and Deckhands

94. Young people coming into the fishery will not be able to enter. Permit prices will skyrocket and be a barrier to their entry. (Patana, S. Bettencourt and D. Bettencourt)

*See the following comment and response to comment 89.*

95. Young people will not be kept out of limited entry by high permit prices. License prices will reflect the value of participation in the fishery. If the fishery is profitable, high license prices

may result, but only because earnings are high. If the fishery stabilizes, it will be easier for new entrants to borrow money. (Young)

*This is substantially one of the results expected by the Council.*

96. As a deckhand, the commenter has no record of a history in the fishery and therefore cannot qualify. (Plourd)

*Because a significant portion of the value of some vessels will be split off into the value of the permit received for the vessel, vessel owners who have invested in the fishery would experience a loss if they were not to receive permits. On the other hand, the value of the labor of a crew member without a permit for a vessel does not change. Since only a limited number of permits would be issued (one per vessel), preference was given to vessel owners in the issuing of permits.*

#### Fairness and Equity

97. The window period is not a fair way to decide who receives permits. (Scarborough)

It is not fair to apply qualification requirements retroactively. (Weikal)

*The window period and qualifying requirements encompass the idea that permits should be issued to those who are dependent on operations which have historically participated in the fishery, as of the time development of the amendment was initiated. The rationale for various provisions of the program and issue of fairness in the choice of the manner in which permits would be issued are discussed at length in Chapter 4 of the SEIS. Also, see response to comment 15.*

98. Full utilization of the Pacific whiting resource has only come in the last year with the entry of vessels that catch and process whiting, yet qualification for limited entry is based on a window period which includes primarily years in which there was a foreign fishery. Those who fully Americanized the fishery should not be barred from future participation. The catcher vessel delivering to mother ships is not an appropriate means of participation with respect to whiting because it assures that the nation receives a significantly reduced value from the resource. (American Factory Trawlers Association)

*There will be sufficient catcher capacity in the permitted fleet to harvest the entire whiting resource. Processors (including motherships) are not prevented from participating in the fishery by the limited entry system. As with any vessel entering the fishery after August 1, 1988, catcher-processors may displace current participants through the purchase of permits. If it appears that the fishery may become exploited by foreign vessels because of a lack of permitted catchers delivering to domestic processing NMFS may issue designated species "B" endorsements valid for one year's fishing. It has not been established that catcher-mothership operations are less efficient than catcher-processors.*

99. Many of the provisions in the plan are inequitable without a clear rationale. Examples: (1) trawlers who landed nongroundfish species are not given permits while longliners with no landings history are allowed the opportunity to participate in the open access fishery; (2) the plan discriminates against exempt gears by not giving them transferable permits; (3) some fleets (the Newport Beach Dory fleet) are exempted while similar provisions are not made for other fleets. (PCFFA)

Chapter 4 of the SEIS provides the rationale for the significant provisions of the plan. Rationale for all of the commenter's examples have been provided in documents distributed to the public during the public comment period. In response to the examples given: (1) trawlers not landing groundfish were not given permits because they did not have a sufficient history with groundfish trawl gear. Trawlers were not provided an opportunity in the open access fishery because they would not be able to operate under the landing limits which would be allowed in that fishery without causing serious wastage through discards, and, as a group, trawlers were not seriously affected by the 500 pound landing threshold imposed on the MLR; (2) "exempt gears" were exempted from the requirement of having a permit at the request of their representatives (including the PCFFA representative); (3) the "exemption" which may be provided to the Newport Beach Dory fleet is open to any other small fleet under a local jurisdiction limited entry system as of July 11, 1991 which has a special historical and cultural significance to its local community.

100. The plan arbitrarily eliminates trawlers in the Santa Maria Basin and Santa Barbara Channel. (PCFFA)

See response to comment 4.

101. The window period selected is arbitrary. (PCFFA)

The cutoff date selected for the end of the window period is the earliest date which could be selected with adequate notice in the Federal Register. Regarding the importance of the cutoff date see response to comment 15. The length of the window period is such that it is felt that most vessels which rely on the groundfish fishery for a substantial portion of their income should have been active in the fishery at some time during that period. The level of activity required for the whole window period is rather low (between 5 and 9 landings depending on the gear type) and could be easily achieved by a vessel which was completely out of the fishery due to temporary circumstances as well as by combination vessels. A larger window would only result in a different set of qualifiers: the minimum landing requirements would have to be raised to result in the issuance of a reasonable number of "A" endorsements and, as a result, some of those active in the window period would be eliminated while some of those active only prior to the period would be included. Thus the net result of the suggestion is just another variation which alters who is among the group of "winners" and who is among the group of "losers." See Chapter 4 for further discussion of the factors considered in selection of the window period and qualification requirements.

#### Effect on Consumer Prices

102. To the extent that limited entry prevents overuse of other regulations, it will actually work to lower fish prices to the consumer. (Young)

The Council agrees with the comment.

#### Effect on Gill net Vessels

103. The plan fails to address how the rockfish gill net fishery will fit into the scheme of the proposed program. The banned rockfish gill net vessels may enter the trawl fishery for California halibut in which there is a bycatch of such groundfish species as starry flounder. (PCFFA)

*Paragraph 9, Section 14.3.2.3 of the amendment, which contains provisions for prohibited gear, was designed with the possible situation of the California gill net vessels in mind. Under these provisions a banned gill net vessel may have the opportunity to acquire a permit for trawl gear which might be used in the California halibut fishery. See responses to comments 10.*

104. The trawl fishery for halibut and starry flounder could serve as a replacement fishery for the gill net fishery if necessary. Limited entry will prevent this. (Wright)

*Provisions have been made for prohibited gear, provided the prohibition is sufficiently extensive. Limited entry will prevent vessels involved in declining fisheries from entering the groundfish fishery without displacing existing vessels.*

Limited Entry, the U.S. Economic System and Economic Policy

105. Let economics take care of the fishery or leave it to the states to regulate. (Scarborough)

*The following two public comments reflect the response to the idea that economics can adequately regulate the fishery. Since much of the resource is harvested in Federal waters and there is movement of vessels between states, a limited entry system based on Federal permits is appropriate.*

106. Limited entry is needed. Economics will not take care of limited entry. When a fishing business fails it does not reduce the capacity of the fleet. The boat will be tied up for a while then eventually be back on the grounds. (McMullen)

*The process outlined by this comment is the reason the Council does not believe economics alone is sufficient to control capital investment in the fishery. The Capital Construction Fund exacerbates this problem when it continues to feed subsidized capital into an industry despite the fact that reduced profits have resulted in the sale of existing capital at prices below its original purchase value less real depreciation.*

107. Fisheries are unique in that access rights are given away. The government commonly sells, leases or rents a large variety of public resources. Limited entry is not un-American or anti-free enterprise. (Young)

*The Council notes that limited entry systems are authorized under the MFCMA and are constitutional. Limited entry is a step toward imbuing the fisheries with some of the attributes of private property. Private property is the basis of the free enterprise system.*

108. Limited entry will result in a large reduction in the number of vessels active in the fleet and thus have an adverse effect on competition, contrary to what is intended under E.O. 12291. (Ashwin)

*Competition where property rights are not fully defined has a different effect than competition in other sectors of the economy. E.O. 12291 also specifies consideration of the effect on investment. There is overinvestment in the fishery due to the absence of property rights for the fish. Limited entry will help to control this overinvestment.*

109. The SEIS states that "any regulatory measures resulting from this amendment will only affect a smaller portion of the fleet." Examination of the numbers of vessels involved led the commenter to conclude that "a substantial number of small entities will be impacted by these measures." (Ashwin)

*The statement in the SEIS was intended only to indicate the number of fishing vessels that would be affected out of a larger group. This statement does not indicate whether the number is considered substantial. A substantial number of small entities will be impacted.*

## **MLR**

110. Adopt the high MLR. (Hartzell, Miller, Schock, California Assemblywoman Allen)

If ITQs are not adopted, adopt limited entry with the high MLR. (Miller)

Adopt the low MLR. (Slostad, Malone)

Something greater than the low MLR should be chosen to prevent the fishery from going to vessels which have historically relied on it for only five to ten percent of their revenues. (Miller, Dan McDaniel, Lyshol, Newcoomb, Dale McDaniel, Catterall)

*After considering public testimony and the effects of various MLRs, the Council has chosen an MLR which performs in a manner similar to the high MLR. As a result it expects a longline and fishpot fleet size close to, but slightly above, that operating in recent years in the fishery (the amount above will depend on the number of vessels qualifying on the basis of special circumstances). The MLR for trawl vessels is less restrictive because options were not provided for these vessels in the open access fishery.*

## Support and Opposition to License Limitation

111. Opposing Limited Entry (California State Senator Kopp, San Mateo Harbor District, Moss, Thime, Reeves, Marchand, Plourd, Strom, Wright, Degner, Warnock, Patana, Weikal, Thomas, Murray, Nungaray, G. Bettencourt, D. Bettencourt, Merlo, Burke, Irwin, PCFFA, Citizens Against Limited Entry, Scarborough, Merlo, McMaster, Pugh, Dupuy, Green, Parish, Reany, D. Choi, Y. Choi)

Supporting Limited Entry (Hartzel, McMullen, Miller, Dan McDaniel, Lyshol, Newcoomb, Dale McDaniel, California Assemblywomen Allen, Massey, Miller, Young, K. Bornstein, Yeck, Cooper, Tarr, Schock, Slostad)

The Council must act favorably on limited entry if ITQs are adopted for the sablefish longline fishery in Alaska, otherwise there will be a considerable increase in effort off the West Coast. (Miller, Dan McDaniel, Lyshol, Newcoomb, Dale McDaniel, Catterall).

*The Council expects the license limitation program will be effective and believes the future of the fishery will be better with license limitation than without it.*

## Support and Opposition to ITOs

112. Adopt ITQs for the longline fleet off the West Coast. (Miller, Hartzel, PCFFA)

*The reasons the Council did not choose to develop an ITQ program at this point in the process are outlined in Chapter 2 of the SEIS. The Council will be considering ITQs as an alternative which may further rationalize the fishery and has announced November 13, 1991 as the date beyond which it may not consider any landings as part of the fishing history on which it may base issuance of ITQs.*

## Miscellaneous

113. There is a fleet which catches small quantities of fish and delivers them live for high prices, which may be adversely impacted by limited entry. (Stagnaro, Tavasieff)

*If this fleet has recorded landings during the window period, it should be able to qualify on the basis of number of days of landings. If the landings are very small, (under 500 pounds a day) the opportunity should continue to be available in the open access fishery.*

114. Restrictive trip limits placed on the open access fishery may result in increased safety problems, a tendency to highgrade, reduced economic viability, and disproportionately high management efforts in a low volume fishery. Management should be directed toward the trawl and longline fisheries. (Malone)

*See response to comment 25.*

115. The Council should not use the recent historic period (mid-1980's) as the primary basis for establishing future allocations. It was during this period that excess longline and trawl capacity resulted in lost fishing opportunities for other gears. (Malone)

*The lost fishing opportunity for other gears during this period was relatively minor and occurred in the nontrawl sablefish fishery. Less than one month was lost in 1985 when the sablefish fishery was shut down in December and in 1986 and 1987 the fishery shut down in mid-October. The closures occurring in 1988 occurred after the end of the window period. In total, less than six months of late fall and early winter fishing were lost out of the 48 month window period.*

116. Limited entry must be evaluated in the context of all available fishery management tools. The burden of any individual management measure will be minimized by the use of a mix of management measures. (Young)

*The Council's position has been that it has available most of the tools necessary to conserve the resource. The reason for consideration of limited entry is to evaluate whether alternative tools might have a better mix of social and economic impacts. For example, an observer program would provide knowledge of at-sea discards enabling the Council to properly conserve the resource. However, additional entry into the fishery would require more restrictive limits and waste inducing regulations.*

117. The Council's program, like the California sea urchin limited entry program, may be found unconstitutional. (Reamey)

*A large number of limited entry programs have survived constitutional tests.*

118. Some people are having landing receipts made for them so they can qualify for a permit. (Green)

*The state and federal government keep files with landing records. Landing records have unique ticket numbers and are correlated with specific vessels. Landing records presented in support of a permit application will be compared to these records. It will therefore be very difficult to create false landing records.*

119. The program is cumbersome and difficult to understand. The rationale behind the provisions is incomprehensible. For example, what valid purpose do the "A" and "B" endorsements serve. (PCFFA)

*As acknowledged by PCFFA, the species mix (particularly the presence of underutilized species) and various gear types make the groundfish fishery a complex fishery. To design an effective plan in this situation required more complexity than might have otherwise been necessary. Many parts of the limited entry program have been simplified in content and presentation since the program was initially sent out for public review (e.g. provisional "A" endorsement upgrade requirements have been simplified, the designated species "A" and provisional designated species "A" endorsements eliminated, and endorsements renamed to reflect the two tiered endorsement structure). The rationale for many of the provisions in the plan were explained in the section of Chapter 7 of the draft SEIS on fairness and equity. It was also explained that the "B" endorsements are provided for individuals who would not otherwise have been given access rights in the fishery (an "A" endorsement). "B" endorsements provide an adjustment period for those who had some low level of activity in the fishery, but did not meet the MLRs. The duration of these endorsements also allow complete depreciation after the cutoff date for all vessel owners using the seven year depreciation schedule commonly used by fishermen. In response to comments on the need to provide more information on rationale, a new chapter has been added to the SEIS (Chapter 4) and most information previously found in the section on fairness and equity moved there.*

120. Even though only U.S. citizens may obtain fishing permits to operate documented vessels over 5 tons, Vietnamese fishermen receive special treatment and government subsidies. (Ashwin)

*This is beyond the scope of the limited entry program.*

121. Those that have invested time and money in the fishery should be protected. (Cooper)

*The primary objective of license limitation is to limit or reduce capacity. This objective is based on the overcapitalization resulting from the open access status of the resource and the consequent wastage of national economic resources together with the management problems presented by too much capital in the fishery. Protection of individuals in the industry is consistent with objectives for stability and not disrupting the fishery, however, it is not a specific objective of the program. Nonetheless, the window period and MLRs were designed to provide initial permits to owners of vessels with a history in the fishery and dependence on the resource (see Section 4.4.4.)*

Comments on the Content of the SEIS and Council Process

122. Consider a system based on "sole ownership." Under sole ownership, the fishery would be managed by a single owner of the resource. (Keene)

*The Council solicited comment on the alternative limited entry schemes to be considered during the scoping phase of developing the amendment. This was not suggested at that time and so has not been included in the SEIS. While sole ownership may provide an interesting conceptual contrast to the schemes currently under consideration, the change in social and economic structure entailed in such an alternative is tremendous and would run counter to several of the objectives in the groundfish management plan.*

123. There is no analysis of the buy-back program and no information concerning who is to bear the burden of this cost. (Parrish)

*The buy-back program is not being proposed or adopted here but identified as a future possibility. The funds would be collected through fees on permits and monies directly used to buy back permits from voluntary sellers. This is not authorized under current law.*

124. What consideration is given to small vessel safety in making allocations? (Malone)

*The Council generally considers safety issues when the regulations which implement the allocation are determined.*

125. How will the historic catch of the set-net fishery be allocated? Is it the Council's intent to manage the open access fisheries as year-round fisheries? (Malone)

*Actions were taken at the July 1991 Council meeting to address these issues. The historic catch of this group will count toward determining the open access quota for the fishery, unless as a result of the gill net ban, these vessels are issued limited entry permits. If this happens, the historic catch of these vessels would be counted toward determining the limited access quota. It is the Council's intent to manage the open access fishery as a year round fishery.*

126. Are Scottish seine gears included as limited entry trawl gear? (Malone)

*Yes. Scottish seines are within the definition of trawl gear.*

127. What are the Council's estimates of lost economic opportunity due to discards of juvenile market fish and adult excess-quota fish resulting from trawl operations? How will limited entry reduce this lost opportunity as a percentage of total catch? Council estimates of waste by gear should be included in the SEIS. (Malone)

*An observer program would be required to make these estimates. Assumptions about discards are made in some of the stock assessments. The secondary objective of reducing bycatch and waste is being pursued through minimization of the expansion of numbers of vessels in the fishery so that regulations which induce waste will be less restrictive, and hence result in less waste. See response to comment 23.*

128. Additional description of the impacts on exempted gears is required. (Citizens Against Limited Entry)

*Additional analysis has been carried out and is incorporated in the final SEIS.*

129. Data should be provided in the SEIS supporting the contention that stocks in the Monterey and Conception management areas are not fully utilized. (Malone)

*This statement has been dropped from the license limitation alternative and the SEIS.*

130. The Council has not provided the option of no limited entry (Warnock)

*Status quo (no action) is the no limited entry alternative.*

131. Despite representations in the Council documents, the LEC was clearly 100 percent in favor of limited entry and only looking to defeat arguments against it. (Ashwin)

*The members of the LEC were charged with designing the best system they could regardless of their personal beliefs. Several members remain opposed to limited entry and comments against limited entry from at least one of the members are summarized in this chapter.*

132. Adequate opportunity has not been provided for public comment regarding future allocations. (Malone)

*Tables in the additional analysis distributed to the public in July 1991 (45 days prior to the end of the official comment period) provide information on historical catch and more opportunity for public comment on allocation between exempted and limited entry fisheries.*

133. The PCFFA representative is not currently a member of the limited entry committee and has not participated on the committee for over two years. Listing PCFFA as a member of the committee misleads reviewers. (PCFFA)

*At the start of the document which specifies the license limitation program in detail, acknowledgement is given to seven committees which participated at some point in the process of development of this amendment package. The first of these is the LEC on which PCFFA was represented. This committee held its last meeting in June of 1988 and made its final report to the Council in July of 1988, as indicated in the introduction to the SEIS. PCFFA's seat was never eliminated from that committee. The work product of the committee was two limited entry alternatives which varied mainly in the MLRs suggested and the transferability of "B" endorsements. These proposals contained the basic principles and provisions on which the Council's adopted license limitation alternative was based. Many of the provisions to which the PCFFA has raised objections (addressed in other parts of this document) were in both of the LEC's original proposals. The next committee with major responsibility for the development of the limited entry amendment was the LEADOC. This committee was dominated by government representatives with expertise in regulatory requirements, but had representation from the two major gear groups, trawl and fixed gear, and a representative for the exempted gears, who sat as committee chairman. The primary charge for this committee was to consider the information gathered through the industry survey and public comments at workshops in crafting a single license limitation alternative out of the two alternatives developed by the LEC.*

*During this committee's existence, reports were made at every Council meeting at which time the Council made decisions affecting the content of the license limitation alternative. Industry input came to the Council through industry seats on the oversight committee, through the Groundfish Advisory Subpanel and through testimony to the Council at every meeting.*

134. The Council failed to enact a moratorium during the lengthy consideration of limited entry, state with certainty its intentions, and develop a plan in a timely manner. The notice that a limited entry system was being considered and that there was a cutoff date left many individuals in a state of uncertainty about whether or not to invest in the fishery. These individuals could not afford to wait to make their decisions. (PCFFA)

*The process of developing this amendment took four years. The amendment was completed and recommended for implementation three years after the August 1, 1988 cutoff date. One of the major reasons for the length of the process was the one and a half year period which the Council took to hold workshops, survey the industry and incorporate the results of the workshops and survey into the design of the license limitation alternative. This was done on the consensus recommendation of the original LEC. This process did involve a sustained period of uncertainty for many in the industry, but provided a proposal based on broad industry input. Many fishermen continued with the purchase and sale of vessels by making reservations in their contracts for transfer of limited entry permits at a later date should a permit be issued for the transferred vessel. It was impossible for the Council to state its intentions with certainty until the amendment was developed, analyzed and public comment received. A moratorium would have required as much government action and expense as the limited entry program, would have required a similar decision making process, and would have left individuals in a similar state of uncertainty while the details of the moratorium were worked out. In addition, nothing is certain until the plan is implemented and approved by the Secretary of Commerce.*

135. Many fishermen in southern California are surprised to find out about limited entry. Prior to investing in the fishery, the commenter had contacted the state and NMFS about fishery regulations but had not been told about a pending limited entry system. (Plourd)

*While individuals at these agencies may not have informed the commenter about the pending limited entry plan, the plan and cutoff dates have been publicized in Council mailings, fishing publications, fishermen association mailings, fishing expositions, Sea Grant newsletters and the Federal Register. Posters announcing Council workshops on limited entry were distributed through Sea Grant offices up and down the West Coast. It is usually incumbent on persons investigating entry or modification of a business to make inquiries with all regulatory agencies under whose jurisdictions they will operate. See comment 15.*