

[Federal Register: August 24, 1994]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, 675, and 676

[Docket No. 050494B; I.D. 081194C]

**Limited Access** Management of Federal Fisheries In and Off of  
**Alaska**

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

ACTION: Disapproval of fishery management plan amendments and withdrawal of proposed rule.

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SUMMARY: NMFS announces that it has disapproved Fishery Management Plan

(FMP) amendments that would have imposed a moratorium on the entry of new vessels into the Alaskan groundfish and crab fisheries. Therefore, NMFS withdraws the proposed rule for these FMP amendments and for a moratorium in the halibut fishery. NMFS determined that provisions of the proposed moratorium would violate the national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter, 907-586-7228.

SUPPLEMENTARY INFORMATION: On June 3, 1994, NMFS published proposed regulations (59 FR 28827) that would implement proposed Amendment 23 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian

Islands Management Area, Amendment 28 to the FMP for Groundfish of the Gulf of **Alaska**, Amendment 4 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area, and a proposed regulatory amendment affecting the Pacific halibut fishery in the waters in and off of **Alaska**. The proposed amendments would have imposed a temporary moratorium on the entrance of new vessels into these fisheries to curtail increases in fishing capacity and provide industry stability while the North Pacific Fishery Management Council (Council) and the Secretary of Commerce prepare, review, and, if approved, implement a comprehensive management plan for these fisheries.

NMFS disapproved the proposed moratorium amendments on August 5, 1994, because certain provisions are not consistent with the Magnuson Act's national standards and other applicable law. The proposed crossover provision and qualifying period are inconsistent with national standards 1, 4, and 5, and are arbitrary and capricious in violation of the Administrative Procedure Act (APA). In addition, it is not clear that the proposed moratorium program adequately considers present participation in the fisheries, and, therefore, violates Magnuson Act section 303(b)(6) and the APA. The proposed appeals procedure would unnecessarily duplicate an existing **limited access** appeals procedure, and so violates national standard 7. Finally, NMFS found the proposed moratorium regulatory amendment affecting the halibut fishery would violate section 5(a) of the Northern Pacific Halibut Act because of inadequate consideration of present participation and the crossover provision's exacerbation of the overcapacity problem that the moratorium was intended to control.

NMFS has recommended that the Council submit revised moratorium amendments with additional supporting analysis for consideration by NMFS under the accelerated review schedule provided by the Magnuson Act.

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

Dated: August 18, 1994.

Gary Matlock,  
Program Management Officer, National Marine Fisheries Service.  
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