

[Federal Register: June 3, 1994]

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DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration
50 CFR Parts 671, 672, 675, and 676 [Docket No. 940556-4156; I.D. 050494B]
RIN 0648-AE62

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: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement a moratorium for a temporary period on the entry of new vessels into the groundfish, crab, and halibut fisheries contained in proposed Amendment 23 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), proposed Amendment 28 to the FMP for Groundfish of the Gulf of Alaska (GOA), proposed 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 moratorium is designed as a temporary measure that is necessary to curtail increases in fishing capacity and provide industry stability while the North Pacific Fishery Management Council (Council) and the Secretary of Commerce (Secretary) prepare, review, and, if approved, implement a comprehensive management plan for these fisheries. This action is intended to promote the objectives of the Council to promote conservation and management of groundfish, crab, and halibut resources, and to further the objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act) and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

DATES: Comments must be received at the following address by July 15, 1994.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of proposed Amendments 23 and 28 to the BSAI and GOA groundfish FMPs, Amendment 4 to the Bering Sea and Aleutian Islands Area king and Tanner crab FMP, and the Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/ RIR/IRFA) for the moratorium may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS at 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by the Secretary under the GOA and BSAI FMPs. The commercial harvest of king and Tanner crabs is managed under the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. These FMPs were prepared by the Council under the Magnuson Act. The FMP for the GOA groundfish fisheries is implemented by regulations at 50 CFR parts 672 and 676, and the FMP for the BSAI groundfish fisheries is implemented by regulations at 50 CFR parts 675 and 676. The FMP for the king and Tanner crab fisheries in the BSAI is implemented by regulations at 50 CFR part 671 and by Alaska Administrative Code regulations at title 5, chapters 34 and 35. For crab, BSAI means the Bering Sea and Aleutian Islands area as

defined at Sec. 671.2, and is a slightly different area than the BSAI management area as defined for groundfish at Sec. 675.2. General regulations that also pertain to the U.S. groundfish and crab fisheries are set out at 50 CFR part 620.

The Council does not have a FMP for halibut. The domestic fishery for halibut in and off of Alaska is managed by the International Pacific Halibut Commission (IPHC) as provided by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Bering Sea (Convention), signed at Washington, DC, March 29, 1979, and the Halibut Act. The Convention and the Halibut Act authorize the respective Regional Fishery Management Councils established by the Magnuson Act to develop regulations that are in addition to, but not in conflict with, regulations adopted by the IPHC affecting the U.S. halibut fishery. Under this authority, the Council may develop for approval by the Secretary limited access policies for the Pacific halibut fishery in Convention waters in and off of Alaska. ``Convention waters'' means the maritime areas off the west coast of the United States and Canada as described in Article I of the Convention (see 16 U.S.C. 773(d)). The Council acted under this authority in recommending its proposed moratorium for the halibut fishery. Regulations governing the harvesting of Pacific halibut are set out at 50 CFR parts 301 and 676.

In 1987, amid growing indications of excess harvesting capacity in the North Pacific groundfish fisheries, the Council adopted a ``statement of commitment'' to pursue alternative management measures that would achieve optimum yield through more rational fishing effort than exists with the current open access system. The Council identified ways to fulfill this commitment that included the development of an alternative management strategy for groundfish fisheries and the consideration of effort management in the crab and halibut fisheries.

Fishery management planning work continued in 1987 with the formation of the Future of Groundfish (FOG) Committee. The FOG Committee undertook a comprehensive examination of the groundfish, crab, and halibut fisheries off of Alaska. It concluded that problems of excess harvesting capacity and allocation conflicts would worsen under a continued open access system. The committee recommended a limited access management approach for these three fisheries.

In 1989 and 1990, the Council considered methods for implementing a moratorium that would limit access of new vessels into the groundfish, crab, and halibut fisheries. At its meeting in August 1990, the Council recommended that NMFS publish a notice in the Federal Register to: a. Inform the public of the Council's intention to develop measures to limit access; and b. announce a control date after which owners of vessels that had not previously participated would not be assured future access to these fisheries if a limited access system were implemented using that control date. The control date notice was published on September 5, 1990 (55 FR 36302), corrected on September 13, 1990 (55 FR 37729), and announced September 15, 1990, as the control date.

The control date notice stated that ``due consideration'' would be given to vessels that were under construction or under contract for purchase or construction and that had harvested or processed groundfish, crab, or halibut by January 15, 1992. In response to the delay of the 1992 trawl groundfish season from January 1, 1992, until January 20, 1992, the Council decided at its September 1991 meeting to change the final ``due consideration'' date to February 9, 1992.

The control date notice indicated that the Council was examining a change in the current open-access nature of the groundfish, crab, and halibut fisheries as part of a long-term solution to chronic conservation and management problems. The Council is continuing its study of long-term solutions to problems in these fisheries in its comprehensive management plan.

The moratorium is not expected to resolve the problem of excess capacity. However, the Council considers it necessary as an interim management measure to curtail increases in fishing capacity and provide temporary industry stability. While the moratorium is in effect, the Council can prepare and the Secretary can review and, if approved, implement a comprehensive management plan. The Council also determined that the moratorium would aid in the achievement of optimum yield by freezing the number of vessels allowed to participate in these fisheries and limiting increases in fishing capacity, both of which would increase economic benefits to fishermen and reduce the risk of overfishing.

Vessel Moratorium Program

The following section provides a summary of the provisions included in the motion, clarifications, and the Council's rationale for selecting those provisions. The subsequent section, ``Implementation of the Moratorium,`` explains how the moratorium would be implemented if approved by the Secretary and includes changes proposed by NMFS to supplement the Council's proposed moratorium. The Council adopted a moratorium by approving a motion at its June 1992 meeting, with clarification in August 1992 and January 1993.

Section 304(a)(1)(D) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendments and regulations. At this time, the Secretary has not determined that the FMP amendments these regulations would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making final determinations, will take into account the data, views, and comments received during the comment period.

Provisions Contained in the Council's Motions

1. Moratorium Fisheries

The proposed moratorium fisheries would be: a. All groundfish fisheries managed under the GOA FMP; b. all groundfish fisheries managed under the BSAI FMP; c. all crab fisheries managed under the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI; and d. the commercial Pacific halibut fishery conducted in the waters in and off of the State of Alaska (State).

2. Affected Sectors of the Industry

The moratorium would apply only to catcher vessels and catcher-processor vessels participating in one or more of the moratorium fisheries. The Council designed the moratorium to stem the growth in harvesting capacity. It determined that restricting motherships, tendering vessels, and other support vessels would not accomplish this goal.

3. Qualifying Period

A vessel could be used to participate in any of the moratorium fisheries during the moratorium, if a reported landing in one of the moratorium fisheries was made from that vessel between January 1, 1980, and February 9, 1992. Such a vessel would be called a ``qualifying vessel.``

The Council determined that a date earlier than January 1, 1980, would have increased the size of the fleet eligible to participate during the moratorium period and placed a greater weight on past participation. A date later than January 1, 1980, would have restricted the size of the fleet eligible to participate during the moratorium period only to current or very

recent participants.

The Council selected February 9, 1992, as the ending date for the qualifying period instead of the announced control date of September 15, 1990, with its ``due consideration'' requirements. Determining which vessels should be allowed to participate during the moratorium under ``due consideration'' would have required extensive review of documents submitted by the vessel owners and investigation as to whether the documents proved that vessels were qualifying vessels under the ``due consideration'' criteria. The Council deemed the submission and review of documents as too burdensome and expensive to implement. By selecting February 9, 1992, the Council included all vessels that were under ``due consideration'' without having to make any findings concerning construction or vessels under contract.

The qualifying period adopted by the Council would allow approximately 13,500 vessels to be eligible to participate in the moratorium fisheries during the moratorium. Substantially fewer vessels participate in any one year. In 1991, only about 4,500 vessels participated in the moratorium fisheries. NMFS particularly requests public comment on the effect of this qualifying period on the objectives of the moratorium.

4. Minimum Qualifying Poundage

The Council did not require landing of a specific minimum poundage from a moratorium fishery. A qualifying vessel would be one that made a reported landing from a moratorium fishery during the qualifying period. The Council reasoned that basing moratorium eligibility on landing a minimum amount from a moratorium fishery would become allocative among different segments of the industry and should be addressed in the comprehensive management plan.

5. Duration of Moratorium

The moratorium would be in effect for no longer than 3 years from the date of implementation. The proposed FMP amendment language states that the Council may extend the moratorium for up to 2 years if a permanent limited access program is imminent. This provides flexibility in the duration of the moratorium if progress is made on a permanent limited access program, but does not unnecessarily prolong the moratorium in the absence of further progress on the underlying overcapitalization problem. If no further action is taken concerning a limited access program during the moratorium, the moratorium would expire, because its justification would no longer be valid.

6. Crossovers

The Council determined that a qualifying vessel would be allowed to participate in all moratorium fisheries during the moratorium, even if the vessel had a reported landing from only one moratorium fishery. The Council reasoned that restrictions on the ability to crossover into other moratorium fisheries would constrain a fisherman's flexibility during the moratorium and would be allocative among different sectors of the industry. The Council determined that crossover restrictions would be addressed under the comprehensive management plan.

Crossovers during the moratorium could result in the entry of groundfish and halibut vessels into the crab fisheries, halibut vessels into the groundfish fisheries, and crab pot vessels into the groundfish fisheries. NMFS particularly requests public comment on crossovers, because crossover ability could have the potential to increase the harvesting capacity in the groundfish and crab fisheries, thwarting the goals of the moratorium.

7. Transfer of Moratorium Qualification

``Moratorium qualification'' is proposed for all qualifying vessels. Moratorium qualification could be transferred if two requirements were satisfied. First, the vessel transferring moratorium qualification would no

longer be eligible to participate in any of the moratorium fisheries for the remainder of the moratorium unless that vessel subsequently received transferred moratorium qualification from another vessel. Second, if moratorium qualification were transferred to another vessel, a vessel length restriction would apply to the receiving vessel. The latter restriction, known as the ``20 percent rule'', would restrict vessels that are equal to, or less than, 125 ft (38.1 m) length overall (LOA) from increasing LOA by more than 20 percent, or 125 ft (38.1 m), whichever is less. Vessels over 125 ft (38.1 m) LOA would not be allowed to increase LOA during the moratorium. The LOA of a vessel, as defined at Secs. 672.2 and 675.2, means the horizontal distance, rounded to the nearest foot (.33 m) between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments. For example, the owner of a vessel that is 100 ft (30.5 m) LOA could transfer that vessel's moratorium qualification to a vessel that is 120 ft (36.6 m) LOA or less. The 100- ft (30.5 m) LOA vessel would not be able to participate in any of the moratorium fisheries for the duration of the moratorium because it does not have moratorium qualification. The 100-ft (30.5 m) vessel would be able to participate if it received transferred moratorium qualification from a vessel that was 83 ft (25.3 m) LOA or longer.

The Council did not select a date before which the transfer of moratorium qualification would not be allowed. Recognizing that a market in moratorium qualification had developed, the Council determined that moratorium qualification would rest with the qualifying vessel unless otherwise specified by legal agreement. The Council also determined that the transfer of moratorium qualification would not result in a transfer of the vessel's catch history.

8. Replacement of Vessel

Until the moratorium expires, the owner of a vessel with moratorium qualification would be able to replace that vessel with a vessel that does not have moratorium qualification as long as two requirements were satisfied. First, the replaced vessel would no longer be eligible to participate in any of the moratorium fisheries for the remainder of the moratorium, unless that vessel subsequently received transferred moratorium qualification from another vessel. Second, any increase in LOA through vessel replacement, sequential vessel replacements, or combined replacement and reconstruction would be limited by the 20 percent rule. The Council deemed the vessel replacement provision as necessary to facilitate the normal and on-going vessel replacement activities undertaken by vessel owners in response to financial, economic, and efficiency incentives.

9. Reconstruction of Vessel

A qualifying vessel that is reconstructed would have to comply with certain restrictions in LOA to remain eligible to participate in any of the moratorium fisheries. The proposed restrictions are: a. If vessel reconstruction were completed before June 24, 1992, any increase in LOA resulting from that reconstruction would be unrestricted; additional reconstruction would be allowed after June 24, 1992, subject to the 20 percent rule. b. If reconstruction were started before June 24, 1992, but not completed by that date, any increase in LOA resulting from that reconstruction would be unrestricted, but no more increases in LOA would be allowed during the moratorium. c. If reconstruction were started on or after June 24, 1992, any increase in LOA resulting from that reconstruction would be subject to the 20 percent rule.

The Council determined that it was important to allow increases in vessel

LOA through reconstruction to provide for enhanced safety and stability, or to allow for the installation of processing equipment. However, the Council determined that reconstruction should not allow unlimited increases in LOA or the objectives of the moratorium would be compromised. The Council chose to limit LOA as a measure of fishing capacity, because it believed LOA was unambiguous, easily determined, and difficult to circumvent. To account equitably for actions already taken by vessel owners, restrictions on increases in LOA would be applicable only to changes that occurred after June 24, 1992, which was the day the Council adopted the 20 percent rule and the public became aware of this Council action through the June 24th Council meeting.

10. Replacement of Lost or Destroyed Vessel

Any qualifying vessel that is lost or destroyed during the moratorium could be replaced by a non-qualifying vessel. Any qualifying vessel that was lost or destroyed on or after January 1, 1989, until the date of moratorium implementation could be replaced with a non-qualifying vessel. However, the replacement vessel would be required to make a landing from a moratorium fishery within 2 years of the moratorium implementation date. A qualifying vessel lost or destroyed before January 1, 1989, could not be replaced. A vessel that replaced a lost or destroyed vessel would be subject to the 20 percent rule, and the replaced vessel would become a non-qualifying vessel unless that vessel subsequently received transferred moratorium qualification.

The Council included this provision to make allowance for a vessel lost or destroyed before and during the moratorium. The January 1, 1989, date was selected because the Council determined that an owner of a vessel lost or destroyed prior to 1989 is likely to have received insurance claims, and already obtained a replacement vessel.

11. Salvage of Lost or Destroyed Vessel

A qualifying vessel that was lost or destroyed on or after January 1, 1989, may be salvaged and remain a qualifying vessel. The Council chose this date because the owner of a vessel lost or destroyed prior to 1989 is likely to have received insurance claims, and already have obtained a replacement vessel.

However, the Council created an exception for a qualifying vessel that was lost or destroyed before January 1, 1989. It could be salvaged and remain moratorium eligible if: a. The salvage operations began by June 24, 1992; and b. the salvaged vessel makes a landing from a moratorium fishery within 2 years of the date of implementation of the moratorium.

The provision to allow the salvage of a vessel before January 1, 1989, was added at the Council's August 1992 meeting based on public testimony received at that meeting. The Council chose June 24, 1992, because that was the date the Council approved the motion on the moratorium. The Council required such a salvaged vessel to make a landing within 2 years of the moratorium implementation date to ensure that the vessel was participating in a moratorium fishery.

12. Exemptions to the Moratorium

The Council included three exemptions to the moratorium. First, a vessel that participates in moratorium fisheries in the GOA that does not exceed 26 ft (7.9 m) LOA, and a vessel that participates in moratorium fisheries in the BSAI that does not exceed 32 ft (9.8 m) LOA would be exempt, providing such vessel lengths are not increased beyond these LOA limits. The Council provided these exemptions because, according to the EA/RIR/IRFA, vessels less than 36 ft (11 m) LOA in the BSAI and GOA were responsible for less than 1 percent of the moratorium fisheries landings and comprised approximately 65 percent of

the fleet of qualified vessels in 1991. Eliminating the smaller vessels from the moratorium would lessen the burden on small vessel owners, while not compromising the goals of the moratorium. The limit was set at 26 ft (7.9 m) LOA or less in the GOA because vessels of this size represent the typical skiff fleet. In the BSAI, 32 ft (9.8 m) LOA represents the historical length restriction imposed on vessels participating in the Bristol Bay drift gillnet salmon fishery.

Second, a newly constructed vessel that was constructed pursuant to an approved Community Development Plan (CDP) under provisions of 50 CFR parts 675 and 676 would be exempted if: a. It were constructed solely for the purpose of furthering the goals of a CDP; b. it were a specialized vessel designed and equipped to meet the needs of a community or group of communities that have specific and unique operating requirements; and c. it were 125 ft (38.1 m) LOA or less. Such a vessel could participate in Community Development Quota (CDQ) and non-CDQ fisheries during the moratorium subject to other regulatory provisions. Such a vessel would lose its exempt status and would be restricted from participating in any of the moratorium fisheries, if it were transferred to a non-CDQ entity during the moratorium, unless the vessel subsequently received transferred moratorium qualification.

Third, a halibut or sablefish fixed gear vessel operating under the provisions of the Individual Fishery Quota (IFQ) program would be exempted from the vessel moratorium, as it affects directed halibut and sablefish operations. The Secretary approved the IFQ program for the halibut and sablefish fixed gear fishery on January 29, 1993 (58 FR 59375, November 9, 1993). A non-qualifying vessel that is harvesting IFQ halibut or sablefish would not be able to participate in any other directed moratorium fishery, but would be permitted to retain moratorium species other than halibut and sablefish in amounts up to 20 percent of the amount of halibut and sablefish on board.

13. Appeals

The Council's preferred alternative provides for an administrative appeal of an initial denial of a vessel permit or license. The intent of the Council, in recommending the opportunity for an administrative appeal, was to allow for an administrative solution to contested eligibility without the expense of a court proceeding. The Council determined that most appeals under the moratorium would be resolved through the examination of records. In the event that review of an appeal would require more than a review of the records and application of the regulations and would benefit from industry expertise, the Council recommended establishment of an adjudication or appeals board to review the appeals.

Implementation of the Moratorium

If approved by the Secretary, the moratorium would be effective for 3 years from its implementation date, as recommended by the Council. If approved, NMFS intends to implement the moratorium on January 1, 1995, through December 31, 1997.

Permit Requirements

Under the moratorium, NMFS is proposing that only a vessel that is issued a permit would be able to participate in the moratorium fisheries. Currently, an owner of a vessel harvesting halibut in the waters in and off of Alaska must obtain a vessel license from the IPHC, a groundfish harvesting, processing or support vessel in Federal waters off of Alaska must obtain a vessel permit from NMFS, and a king or Tanner crab harvesting, processing, or support vessel in Federal and State waters must obtain a vessel permit from the State.

Under the moratorium, a vessel owner would continue to apply to the IPHC for a halibut vessel license, and to NMFS for a groundfish vessel permit. Since the State does not have authority to impose a moratorium on vessels, NMFS also would require a crab harvesting, processing, or support vessel participating in the crab fisheries in the Federal waters of the BSAI to obtain a Federal vessel permit. The State would continue to require a State vessel permit to participate in crab fisheries in State waters, and the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI would continue to defer much of the management of the fishery to the State.

An owner of a support vessel that intends to participate in the moratorium fisheries from January 1, 1995, through December 31, 1997, would have to apply for and receive a permit, but would not be subject to the moratorium eligibility requirements.

Permits and licenses issued under the moratorium would remain harvesting privileges and the Secretary would have the authority to amend or revoke the moratorium and any harvesting privileges thereunder, if required for conservation of the resources.

Eligibility Requirements

As previously discussed, a vessel would be eligible to receive a permit or license if it has moratorium qualification and if its LOA does not exceed the applicable length restrictions. NMFS is proposing to implement the Council's length increase restrictions, or the 20 percent rule, by requiring the LOA of a vessel to be no greater than 1.2 times the ``original qualifying length'' of the qualifying vessel. This calculation results in a ``maximum LOA'' that the vessel may not exceed during the moratorium. The original qualifying length would be the registered length of a qualifying vessel that appears on the most recently submitted application prior to June 24, 1992, for U.S. Coast Guard Certificate of Documentation, or State documentation if the vessel is not required to have U.S. Coast Guard Documentation. For vessels with an original qualifying length of less than or equal to 104 ft (31.7 m), the maximum LOA would be 1.2 times the original qualifying length. For vessels with an original qualifying length greater than 104 ft (31.7 m) but less than or equal to 125 ft (38.1 m), the maximum LOA would be 125 ft (38.1 m). For vessels with an original qualifying length greater than 125 ft (38.1 m), the maximum LOA would be the original qualifying length. Vessels that satisfy both moratorium conditions would be ``eligible vessels.''

Vessel Reconstruction

Vessel reconstruction means an adjustment in the LOA of a qualifying vessel. NMFS proposes that the maximum LOA for a qualifying vessel that is 125 ft (38.1 m) LOA or less could be adjusted through reconstruction and the vessel would remain an eligible vessel under the following three conditions. First, if vessel reconstruction were completed on or before June 24, 1992, the LOA of the reconstructed vessel would become the new original qualifying length of the vessel. The new original qualifying length then would be used to calculate maximum LOA as described above under ``Eligibility Requirements.''

Second, if vessel reconstruction were started before June 24, 1992, but not finished by that date, the LOA of the reconstructed vessel would become the new maximum LOA for the vessel. No further increase in LOA would be permitted during the moratorium. Third, if vessel reconstruction were started on or after June 24, 1992, the maximum LOA would not be adjusted during the moratorium, and any increases in LOA as a result of reconstruction would have to be less than or equal to the maximum LOA for the vessel. Vessel reconstruction would begin and end with the start and completion of the physical modification of the vessel. The determination of any adjustment in

maximum LOA for reconstructed vessels would have to be approved by NMFS and be based on documentation supplied to NMFS that verifies the beginning and ending dates of vessel reconstruction. NMFS proposes that acceptable documentation of the beginning and ending dates of reconstruction would be limited to a notarized affidavit signed by the vessel owner and the owner/manager of the shipyard that specifies the beginning and ending dates of the reconstruction. NMFS particularly requests comments from the public on this proposed method for documenting the beginning and ending dates of vessel reconstruction.

Transfer of Moratorium Qualification

Moratorium qualification would be transferable from a vessel to another vessel or person, or from a person to another person or vessel. Any transfer of moratorium qualification by a vessel would make that vessel ineligible. For the purposes of implementing the moratorium, vessel replacement would be considered a transferral of moratorium qualification. Additionally, to establish transfer of moratorium qualification by legal agreement, NMFS proposes that a written contract must exist that documents the transfer and includes certain information as proposed in Sec. 676.3(b)(1)(i).

NMFS would determine the maximum LOA for each qualifying vessel prior to the implementation of the moratorium. When the moratorium qualification of a qualifying vessel is transferred to another vessel or person, the maximum LOA of the qualifying vessel also would be transferred to the vessel or person receiving the moratorium qualification. Maximum LOA would remain attached to a specific moratorium qualification regardless of how many times that moratorium qualification was transferred. If moratorium qualification is transferred to a smaller vessel, that smaller vessel would retain the maximum LOA of the qualifying vessel.

Definition of Vessel Length

The Council intended that the limitations on increases in vessel length be based on the LOA of the vessel. The current LOA of a vessel can be measured as it is defined in Secs. 672.2 and 675.2, but complete records of the historical LOA of vessels during the qualifying period are not available for calculating the maximum LOA as proposed by NMFS. Various methods for measuring vessel length were used on vessel permit and license forms during the qualifying period by NMFS, the State, IPHC, and the U.S. Coast Guard (USCG). For example, several different methods of measuring ``registered length'' were used, and an undefined vessel ``length'' was used in addition to LOA. NMFS proposes, for purposes of the moratorium, that historical LOA equal the registered length listed on the most recently submitted application prior to June 24, 1992, for U.S. Coast Guard Certificate of Documentation to provide a single source of data for most original qualifying vessels. A vessel under 32 ft (9.8 m) LOA that does not have USCG documentation may use vessel length as specified in State registration.

A difficulty with the NMFS proposal is that the USCG registered length is sometimes less than actual LOA. This may cause a problem for a vessel that already has increased its length using actual historical LOA according to the Council's recommendations, resulting in an increase that exceeds the maximum LOA. Consequently, the vessel would be an ineligible vessel. Also, a vessel that has not yet increased its length according to the Council's 20 percent limit would not be able to increase its length as much as would be allowed if historical LOA were used instead of historical registered length. NMFS particularly requests comment from the public on this subject.

Replacement or Salvage of a Lost or Destroyed Vessel

If a vessel owner submits an application to NMFS for the replacement or salvage of a lost or destroyed vessel, NMFS proposes to determine whether a

vessel is lost or destroyed by consulting the U.S. Coast Guard Report of Marine Casualty, form 2692. If NMFS determines that a vessel is lost or destroyed, a vessel owner would then be required to submit documentation that satisfies the Council's requirements for eligibility of a replacement or salvaged vessel. These proposed information requirements are specified in Sec. 676.3(b)(3)(iii).

Permit Issuance Procedure

For purposes of the moratorium, NMFS would prepare a database that contains each vessel that made a qualifying landing during the qualifying period. The database also would include information concerning ownership and vessel length derived from permit and license data. The database would be used by NMFS for determining eligible vessels. NMFS proposes the following vessel permit and license issuance procedure.

Groundfish

A vessel owner that intends to harvest groundfish in the GOA and BSAI from January 1, 1995, through December 31, 1997, would have to submit to the Director of the Alaska Region, NMFS (Regional Director), a written application for a groundfish vessel permit. An applicant would be issued a permit if: a. The vessel owner submitted a completed vessel permit application; b. the vessel made a qualifying landing during the qualifying period or submitted a completed moratorium qualification transfer application with the vessel permit application; and c. the LOA of the vessel did not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at Sec. 676.3(b)(2) apply, a vessel owner also should submit a completed vessel reconstruction application with the vessel permit application. All permits issued by NMFS would list the maximum LOA applicable for that vessel and for any vessel to which the moratorium qualification is transferred.

If a vessel owner applies to NMFS for a groundfish vessel permit, and NMFS determines that the vessel is an ineligible vessel, the vessel owner would be notified in writing by NMFS that a vessel permit would not be issued. The applicant could appeal the initial decision within 45 days of issuance of the written notification according to the appeal procedures described below. Although each GOA and BSAI groundfish vessel would have to apply for and obtain a vessel permit from NMFS, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Crab

A vessel owner that intends to fish for king and Tanner crab in the Federal waters of the BSAI from January 1, 1995, through December 31, 1997, would have to submit to the Regional Director a written application for a Federal crab vessel permit in addition to any permit required by the State. The application and issuance procedure, and the appeals procedure for crab vessel permits would be the same as for groundfish. Although all vessels operating in crab fisheries in the BSAI would have to apply for and obtain a vessel permit from NMFS, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Halibut

A vessel owner that intends to harvest halibut from January 1, 1995, through December 31, 1997, in the waters in and off Alaska would have to apply for a vessel license from the IPHC. Upon receipt of a written vessel license application, the IPHC would compare the information submitted by the applicant with the NMFS database of eligible vessels. An unrestricted vessel license would be issued if: a. The vessel owner were to submit a completed vessel license application to the IPHC; b. the vessel made a qualifying landing during the qualifying period; and c. the LOA of the vessel did not exceed the

maximum LOA. Each unrestricted vessel license issued by the IPHC would list the maximum LOA applicable for the vessel and for any vessel to which the moratorium qualification is transferred.

If a vessel owner applies to the IPHC for a halibut vessel license but the information on the application does not correspond to the information in the NMFS database, the IPHC would issue a restricted vessel license, applicable only for IPHC management areas 2A or 2B which are in and off British Columbia, Canada, and the States of California, Oregon, and Washington. At this point, the vessel owner would have the option of submitting additional written information regarding eligibility to NMFS within 45 days of issuance of the restricted vessel license. NMFS would review the additional information and issue a written decision as to whether an unrestricted halibut license would be issued. If NMFS initially determines that the vessel is eligible, NMFS would amend the database and inform the IPHC that the vessel is eligible and an unrestricted vessel license could be issued to the vessel owner. If NMFS initially determines that a restricted halibut license would be issued, the applicant may appeal the decision to the Regional Director within 45 days of issuance of the written notification from NMFS according to the appeal procedures described below.

Although vessels operating in the halibut fisheries in the waters in and off of Alaska would have to apply for and obtain a vessel license from the IPHC, only catcher vessels and catcher/processor vessels would be required to be eligible vessels.

Vessels Used in the IFQ Sablefish and Halibut Fixed Gear Fisheries

A vessel operating under the provisions of the halibut and sablefish fixed gear IFQ program would be exempted from the vessel moratorium as it affects directed halibut and sablefish operations. To implement this exemption, an owner of a vessel used in the IFQ sablefish and halibut fixed gear fisheries from January 1, 1995, through December 31, 1997, would have to submit to the Regional Director a written application for a groundfish and crab vessel permit. A vessel permit would be issued if the vessel owner submits a completed application to NMFS as required by Secs. 671.4, 672.4, or Sec. 675.4. The type of permit issued would be based on the eligibility of the vessel under the moratorium.

An eligible vessel used in the IFQ sablefish and halibut fixed gear fisheries would be issued an unrestricted groundfish and crab vessel permit. A vessel that is issued an unrestricted groundfish and crab vessel permit may retain amounts of other moratorium species subject to applicable directed fishing standards.

An ineligible vessel used in the IFQ sablefish and halibut fixed gear fisheries would be issued a restricted groundfish and crab vessel permit. A vessel that is issued a restricted groundfish and crab vessel permit would not be able to retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents in excess of 20 percent of the aggregate amount of sablefish and halibut in round weight equivalents on board.

Letter of Authorization

If a vessel owner submits a complete application for a vessel permit or license, and NMFS preliminarily determines that a vessel is an ineligible vessel, NMFS would send a Letter of Authorization to a vessel owner authorizing a vessel to harvest moratorium species. A Letter of Authorization would allow a vessel owner who applies for a moratorium vessel permit or license to continue operating his vessel until NMFS makes a decision regarding its moratorium qualification.

NMFS would send a Letter of Authorization to the vessel owner within 30 days of receipt of the application, if NMFS has not issued a written initial decision to the vessel owner regarding his vessel's qualification. This Letter of Authorization would be in effect until superseded or rescinded by the Regional Director.

If a vessel owner files a notice of appeal with the Regional Director, NMFS would send a Letter of Authorization to the vessel owner within 30 days of the filing of the appeal with NMFS, pending issuance of a written final decision to the vessel owner on the appeal. This Letter of Authorization would expire 30 days after the Regional Director issues a written final decision on the appeal.

Appeals Procedure

NMFS proposes the following appeals procedure to implement the Council's appeal provisions. A vessel owner may appeal the initial denial of a groundfish and crab vessel permit, the issuance of a restricted halibut vessel license, or the issuance of a restricted groundfish and crab vessel permit to the Regional Director within 45 days of issuance of written notice from NMFS or the IPHC. The Regional Director would decide the appeal on a review of the records submitted, and issue a written decision on the appeal. If the Regional Director were to determine that in deciding the appeal, his decision would benefit from industry input, the Regional Director would forward the appeal to the Appeals Board. NMFS proposes that the Appeals Board would be a committee of the Council comprised of three appointed Council Advisory Panel members. The Appeals Board would meet publicly to discuss the appeal. After receiving the Appeals Board's recommendation from the Council, the Regional Director would consider the recommendation and issue a written decision on the appeal. The Regional Director's decision would constitute the final agency action upon which the applicant would be able to file suit in U.S. District Court.

Notice of a proposed rule that would govern appeals of determinations made for the IFQ program was published on February 9, 1994 (59 FR 5979). Public comment is particularly requested on using the same appeals procedure for the IFQ and moratorium programs.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule, if adopted, could have a significant economic impact on a substantial number of small entities. Based on the EA/RIR/ IRFA for the moratorium, total participation in the moratorium fisheries for a given year is influenced by the annual rate of entrance and exit of vessels. Although new entrants averaged nearly 900 vessels annually over the period from 1977 through 1991, total participation increased only 180 vessels per year, on average, because 500 to 1,000 vessels exited the fisheries annually.

Vessel participation data for 1992 have become available since this analysis was performed. The source of these data are the State of Alaska fish ticket, NMFS groundfish vessel permit, weekly production report, and catch estimate databases.

In 1991, 2,227 vessels fished in Alaska Federal groundfish fisheries, and in 1992, 2,341 vessels fished, for an increase in 1992 of 114 vessels. Approximately half (46 vessels) of this increase is due to vessels less than 60 ft (18.3 m) LOA. Such vessels normally do not make a significant contribution to the overall landings of groundfish. In addition, vessels less than 26 ft (7.9 m) LOA in the GOA and those less than 32 ft (9.8 m) LOA in the BSAI area would be exempt from the moratorium. After subtracting such small vessels and considering only those newly permitted vessels that made recorded groundfish landings in 1992, only about 27 vessels apparently entered the

groundfish fishery in 1992 for the first time, and would not be eligible to fish under the moratorium. With respect to halibut, about 156 ``new'' vessels made landings for the first time in 1992 (some of these had groundfish and crab landings records also). With respect to BSAI crab, eight ``new'' vessels made landings for the first time in 1992. Therefore, a total of about 191 vessels apparently entered the groundfish, halibut, and crab fisheries for the first time in 1992 and may not be eligible for a license if the moratorium is approved and implemented as proposed.

The number of ``new'' vessels that entered these fisheries in 1993 and 1994 is unknown because individual vessel catch data are still preliminary. Assuming that roughly the same number of ``new'' vessels entered these fisheries in 1993 and 1994 as entered in 1992 probably is unrealistic. The Council's moratorium decision occurred midway through 1992. Most fishermen decide whether to enter a fishery at the beginning of the year. Public knowledge of the Council's action after June 1992 probably had a negative effect on a decision to enter a ``new'' vessel in 1993 or 1994. According to the NMFS vessel permit database, about 447 Federal groundfish vessel permits were issued between February 9, 1992, and March 21, 1994, that had never before obtained a groundfish vessel permit. However, the majority of these ``new'' vessel permits likely were issued to halibut longline vessels, which would be exempt from the moratorium when the halibut IFQ program is fully implemented in 1995. In addition, some unknown number of these ``new'' groundfish vessel permits were never used to actually harvest and land groundfish, and others were issued to small vessels that would be exempt from the moratorium. For the reasons described above, the number is likely more than 35, but less than 100, based on the available data and knowledge of the fisheries. A copy of the EA/RIR/IRFA may be obtained (see ADDRESSES).

This rule involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.) that have been submitted to the Office of Management and Budget for approval. Public reporting burden for each year of this collection is estimated to average 0.5 hours per response for completing each of the six information collection requests, except for the crab permit application, which is .33 burden hours per response. The six information collection requests and the estimated number of annual responses are: 1. Crab vessel permit applications, 400; 2. applications for transfer of moratorium qualification, 715; 3. applications for vessel reconstruction, 143; 4. transfer of a lost or destroyed vessel's moratorium qualification, 36; 5. salvage of lost or destroyed vessels, 36; and 6. applications for appeal, 358. These reporting burdens include the time for reviewing the instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

This proposed rule is exempt from prepublication review for purposes of E.O. 12866. List of Subjects in 50 CFR Parts 671, 672, 675, and 676 Fisheries, Recordkeeping and reporting requirements.

Dated: May 27, 1994. Charles Karnella, Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 671, 672, 675, and 676 are proposed to be amended to read as follows:

PART 671--KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

1. The authority citation for 50 CFR part 671 continues to read as follows: Authority: 16 U.S.C. 1801 et seq.

2. Section 671.2 is amended by adding the definitions for ``King crab'' and ``Tanner crab'' as follows:

Sec. 671.2 Definitions.

* * * * *

King crab means red king crab, *Paralithodes camtschatica*; blue king crab, *P. platypus*; or brown (or golden) king crab, *Lithodes aequispina*.

* * * * *

Tanner crab means *Chionoecetes bairdi*; or snow crab, *C. opilio*.

3. Subpart A is amended by adding Sec. 671.3 to read as follows:

Sec. 671.3 Relation to other laws.

(a) Foreign fishing. Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at 50 CFR 611.92. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands Management Area are set forth at 50 CFR 611.93.

(b) King and Tanner crab. Regulations governing the conservation and management of king and Tanner crab are also found in Alaska Administrative Code regulations at Title 5, Chapters 34 and 35.

(c) Halibut fishing. Regulations governing the conservation and management of Pacific halibut are set forth at 50 CFR parts 301 and 676.

(d) Domestic fishing for groundfish. Regulations governing the conservation and management of groundfish in the EEZ of the Gulf of Alaska and in the Bering Sea and Aleutian Islands Management Area are set forth at 50 CFR parts 620, 672, 675, and 676.

(e) Limited access. Regulations governing access to commercial fishery resources are set forth at 50 CFR part 676.

(f) Marine mammals. Regulations governing exemption permits and the recordkeeping and reporting of the incidental take of marine mammals are set forth at 50 CFR 216.24 and part 229.

4. Subpart A is amended by adding Sec. 671.4 to read as follows:

Sec. 671.4 Permits.

This section is effective [DATE 30 DAYS FROM DATE OF PUBLICATION OF FINAL RULE IN THE Federal Register], through December 31, 1997, unless otherwise specified.

(a) General-

(1) Effective from January 1, 1995, through December 31, 1997. No vessel of the United States may fish for king or Tanner crab in the Bering Sea and Aleutian Islands Area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) Issuance of Permits for 1995, 1996, and 1997. Permits issued under this section shall be issued in accordance with the moratorium provisions at 50 CFR 676.3.

(b) Application. A vessel owner may obtain a vessel permit required under paragraph (a) of this section by submitting a written application to the Regional Director containing the following information:

(1) The vessel owner's name, mailing address, and telephone number;

(2) The name of the vessel;

- (3) The vessel's U.S. Coast Guard documentation number or State registration number;
- (4) The home port of the vessel;
- (5) The type of fishing gear to be used;
- (6) The length and net tonnage of the vessel;
- (7) The hull color of the vessel;
- (8) The names of all operators and/or lessees of the vessel;
- (9) Whether the vessel is to be used in crab harvesting, in which case the type of fishing gear to be used must be specified; or for processing or support operations, including the receipt of crab from U.S. vessels at sea; and
- (10) The signature of the applicant.

(c) Issuance.

(1) Except as provided in subpart D of 15 CFR part 904, and subpart A of 50 CFR part 676, upon receipt of a properly completed application, the Regional Director will issue a permit to the vessel. An application that includes the above information will be deemed complete.

(2) Upon receipt of an incomplete or improperly completed application, the Regional Director shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 10 days following the date of notification, the application shall be considered abandoned.

(d) Notification of change. A vessel owner that has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(e) Duration. A permit will continue in full force and effect through December 31 of the year for which it was issued, or until it is revoked, suspended, or modified under part 621 (Civil Procedures) or subpart A of part 676.

(f) Alteration. No person shall alter, erase, or mutilate any permit. Any permit that has been intentionally altered, erased, or mutilated shall be invalid.

(g) Transfer. Permits issued under this part are not transferable or assignable. A permit shall be valid only for the vessel for which it is issued.

(h) Inspection. Any permit issued under this part must be carried aboard the vessel whenever the vessel is fishing for crab. The permit shall be presented for inspection upon request of any authorized officer.

(i) Sanctions. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

PART 672--GROUND FISH OF THE GULF OF Alaska

5. The authority citation for 50 CFR part 672 continues to read as follows:
Authority: 16 U.S.C. 1801 et seq.

6. Section 672.3(f) is added to read as follows:

Sec. 672.3 Relation to other laws.

* * * * *

(f) Crab fishing. This paragraph (f) is effective from [date 30 days from date of publication of final rule in the Federal Register], through December 31, 1997. Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at 50

CFR parts 671 and 676.

7. Section 672.4(a) is revised to read as follows: Sec. 672.4 Permits.

(a) General.

(1) No vessel of the United States may fish for groundfish in the Gulf of Alaska without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) Issuance of Permits for 1995, 1996, and 1997. This paragraph (a)(2) is effective from [date 30 days after date of publication of final rule in the Federal Register], through December 31, 1997. Permits issued under this section for the 1995, 1996, and 1997 fishing years shall be issued in accordance with the moratorium provisions at 50 CFR 676.3.

* * * * *

PART 675--GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA

8. The authority citation for 50 CFR part 675 continues to read as follows: Authority: 16 U.S.C. 1801 et seq.

9. Section 675.3(f) is added to read as follows:

Sec. 675.3 Relation to other laws.

* * * * *

(f) Crab fishing. This paragraph (f) is effective from [date 30 days from date of publication of final rule in the Federal Register], through December 31, 1997. Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at 50 CFR parts 671 and 676.

10. Section 675.4(a) is revised to read as follows:

Sec. 675.4 Permits.

(a) General.

(1) No vessel of the United States may fish for groundfish in the Bering Sea and Aleutian Islands management area without first obtaining a permit issued under this part. Such permits shall be issued without charge.

(2) Issuance of Permits During 1995, 1996, and 1997. This paragraph (a)(2) is effective from [date 30 days after date of publication of final rule in the Federal Register], through December 31, 1997. Permits issued under this section for the 1995, 1996, and 1997 fishing years shall be issued in accordance with the moratorium provisions at 50 CFR 676.3.

* * * * *

PART 676--LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF Alaska

11. The authority citation for part 676 continues to read as follows: Authority: 16 U.S.C. 1801 et seq.

12. Subpart A is amended by adding Secs. 676.1 through 676.7 to read as follows:

Subpart A--Moratorium on Entry

Sec. 676.1 Purpose and scope.

676.2 Definitions.

676.3 Issuance of vessel permits.

676.4 Exemptions.

676.5 Permit issuance procedure.

676.6 Appeals.

676.7 Prohibitions.

Sec. 676.1 Purpose and scope.

This section is effective from [date 30 days after date of publication of the final rule in the Federal Register], through December 31, 1997.

(a) Subpart A of this part implements the moratorium program developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce.

(b) Regulations in subpart A govern:

(1) The issuance of Federal vessel permits for regulating participation in the commercial fisheries for groundfish in that portion of the Gulf of Alaska and Bering Sea and Aleutian Islands management area over which the United States exercises exclusive fishery management authority;

(2) The issuance of Federal vessel permits for regulating participation in the commercial fisheries for king or Tanner crab in that portion of the Bering Sea and Aleutian Islands area over which the United States exercises exclusive fishery management authority; and

(3) The issuance of International Pacific Halibut Commission vessel licenses for regulating participation in the commercial fisheries for Pacific halibut in Convention waters as described in 50 CFR part 301 that are in and off the State of Alaska.

Sec. 676.2 Definitions.

This section is effective from [date 30 days after date of publication of the final rule in the Federal Register], through December 31, 1997. In addition to the definitions in the Magnuson Act and in 50 CFR parts 301, 620, 671, 672, and 675, the terms in subpart A of 50 CFR part 676 have the following meanings:

Appeals Board means a North Pacific Fishery Management Council adjudication board comprised of three North Pacific Fishery Management Council Advisory Panel members appointed by the North Pacific Fishery Management Council.

Eligible vessel means a vessel that has moratorium qualification and has an LOA that is less than or equal to the maximum LOA.

Harvest or harvesting means any activity, other than scientific research conducted by a scientific research vessel, that involves the catching or taking of fish, the attempted catching or taking of fish, or any other activity that can reasonably be expected to result in the catching or taking of fish.

Legal landing means any amount of a moratorium species that was harvested and landed in compliance with State and Federal regulations in existence at the time of the landing.

Letter of authorization means a letter from NMFS to a vessel owner authorizing a vessel to make a legal landing of any moratorium species during the moratorium pending an initial written decision by NMFS on a vessel permit or license application or pending a final written decision by the Regional Director on an appeal.

LOA means length overall as defined at Secs. 672.2 and 675.2.

Lost or destroyed vessel means a vessel that has been sunk at sea or been destroyed by fire or other type of physical damage and is listed on the U.S. Coast Guard Report of Marine Casualty, form 2692.

Maximum LOA means a length overall assigned by NMFS for each original qualifying vessel that represents the greatest LOA to which a vessel may

increase and continue to participate in the moratorium fisheries during the moratorium. For a vessel with an original qualifying length less than or equal to 104 feet (31.7 meters), the maximum LOA is 1.2 times the original qualifying length. For a vessel with an original qualifying length greater than 104 feet (31.7 meters) and equal to or less than 125 feet (38.1 meters), the maximum LOA is 125 feet (38.1 meters). For a vessel with an original qualifying length greater than 125 feet (38.1 meters), the maximum LOA is the original qualifying length.

Moratorium qualification means the privilege of a vessel to fish for moratorium species during the moratorium if the vessel made a qualifying landing. Moratorium qualification may be transferred to another vessel or person.

Moratorium species means Pacific halibut harvested from Convention waters as described in 50 CFR part 301 that are in and off the State of Alaska; groundfish species harvested from the Gulf of Alaska management area as specified in accordance with 50 CFR 672.20(c)(1); groundfish species harvested from the Bering Sea and Aleutian Islands management area as specified in accordance with 50 CFR 675.20(a)(7); and king or Tanner crab harvested from the Bering Sea and Aleutian Islands area.

Original qualifying length means the registered length of an original qualifying vessel that appears on the most recently submitted application for U.S. Coast Guard Certificate of Documentation prior to June 24, 1992, or State of Alaska documentation if the vessel is not required to and does not have a U.S. Coast Guard Certificate of Documentation.

Original qualifying vessel means a U.S. vessel that made a qualifying landing.

Person means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or their successor in interest), whether or not organized or existing under the laws of any state, that is a United States citizen.

Qualifying landing means the legal landing of any amount of a moratorium species during the qualifying period.

Qualifying period means the period of time from January 1, 1980, through February 9, 1992.

Vessel reconstruction means an adjustment in the LOA of a vessel. Vessel reconstruction begins and ends with the start and completion of the physical modification of the vessel.

Sec. 676.3 Issuance of vessel permits.

This section is effective from [date 30 days from date of publication of final rule in the Federal Register], through December 31, 1997.

(a) Applicability. Except for the exemptions to the vessel moratorium listed in Sec. 676.4, the moratorium applies to all catcher vessels and catcher/processor vessels that apply for the following permits or licenses:

- (1) To commercially harvest king or Tanner crab in the Bering Sea and Aleutian Islands area under 50 CFR 671.4;
- (2) To harvest groundfish of the Gulf of Alaska management area under 50 CFR 672.4;
- (3) To harvest groundfish of the Bering Sea and Aleutian Islands management area under 50 CFR 675.4; and
- (4) To commercially harvest Pacific halibut from Convention waters that are in and off the State of Alaska under 50 CFR part 301.

(b) Eligibility criteria. In order for a vessel to receive a vessel permit

or license during the moratorium, the vessel must have made a qualifying landing, and the maximum LOA for the vessel must be greater than or equal to the LOA of the vessel.

(1) Transfer of moratorium qualification. Moratorium qualification may be transferred from a vessel to another vessel or to a person, or from a person to another person or to a vessel. The maximum LOA for the vessel must be transferred with the moratorium qualification. The transfer of moratorium qualification will be authorized under the following conditions:

(i) The owner of the moratorium qualification must submit a written application to NMFS for the transfer of moratorium qualification that must include a copy of a written contract that contains the following information:

(A) Names and addresses of all persons taking part in the transfer;

(B) Vessel names, U.S. Coast Guard identification numbers of any vessels taking part in the transfer, and the LOA of all vessels taking part in the transfer;

(C) A statement describing the transfer of the moratorium qualification; and

(D) Signatures and dates when signed by all persons taking part in the transfer.

(ii) The vessel transferring moratorium qualification must surrender to NMFS all valid permits or licenses to harvest moratorium species and the vessel must not harvest any moratorium species for the remainder of the moratorium unless the vessel subsequently receives moratorium qualification from another vessel;

(iii) NMFS must give written approval to a vessel owner of any transfer of the moratorium qualification prior to receipt by the vessel of moratorium qualification and any harvesting of moratorium species.

(iv) NMFS must give written approval to a person that has received the transfer of moratorium qualification before the transfer will be authorized.

(2) Adjustment to maximum LOA through reconstruction. The maximum LOA for a vessel may be adjusted through vessel reconstruction under the following conditions:

(i) If vessel reconstruction was completed before June 24, 1992, the LOA of the reconstructed vessel will be the new original qualifying length for the vessel, from which a new maximum LOA will be calculated for the reconstructed vessel.

(ii) If vessel reconstruction began before June 24, 1992, but was not completed by that date, the LOA resulting from the reconstruction is the new maximum LOA and no further adjustment in maximum LOA is permitted for the duration of the moratorium.

(iii) If vessel reconstruction was started on or after June 24, 1992, the maximum LOA may not be adjusted.

(iv) Maximum LOA for vessels over 125 feet (38.1 meters) LOA cannot be increased through reconstruction.

(v) NMFS must give written approval to the vessel owner of an adjustment in the maximum LOA due to vessel reconstruction. A vessel owner must receive written approval and a permit or license with the new maximum LOA prior to harvesting any moratorium species. In order to adjust the maximum LOA for a vessel, the vessel owner must submit to NMFS an application for adjustment of the maximum LOA that includes the following information:

(A) Name and address of vessel owner(s);

(B) Vessel name and U.S. Coast Guard vessel identification number;

(C) Written contracts or written agreements with the boatyard or shipyard concerning the vessel reconstruction;

(D) An affidavit signed by the vessel owner(s) and the owner/ manager of the company performing the vessel reconstruction that states the beginning and ending dates of reconstruction; and

(E) An affidavit signed by the vessel owner that lists the new LOA of the vessel.

(3) Lost or destroyed vessel. A lost or destroyed vessel may transfer its moratorium qualification or be salvaged under the following conditions:

(i) Transfer of the Moratorium Qualification of a Lost or Destroyed Vessel. (A) An eligible vessel that is lost or destroyed between January 1, 1995, through December 31, 1997, may transfer its moratorium qualification to another vessel or person as specified in paragraph (b)(1) of this section.

(B) An eligible vessel that was lost or destroyed on or after January 1, 1989, through December 31, 1994, may transfer its moratorium qualification to another vessel or person as specified in paragraph (b)(1) of this section, but the vessel receiving the transferred moratorium qualification must make a legal landing of a moratorium species by December 31, 1996, to remain an eligible vessel.

(C) An eligible vessel that was lost or destroyed before January 1, 1989, cannot transfer its moratorium qualification to another vessel or person.

(ii) Salvage of a lost or destroyed vessel.

(A) An eligible vessel that was lost or destroyed on or after January 1, 1989, may be salvaged and remain an eligible vessel.

(B) An eligible vessel that was lost or destroyed before January 1, 1989, may be salvaged and remain an eligible vessel only if salvage operations began on or before June 24, 1992, and the vessel makes a legal landing of a moratorium species by December 31, 1996.

(iii) Application. A vessel owner must submit an application to NMFS for transfer of moratorium qualification from a lost or destroyed vessel and for the salvage of a lost or destroyed vessel. NMFS must give written approval before any such transfer of moratorium qualification or salvage prior to harvesting moratorium species.

(A) The application for the transfer of moratorium qualification from a vessel that was lost or destroyed from January 1, 1995, through December 31, 1997, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty, and a completed application for the transfer of moratorium qualification as specified in paragraph (b)(1) of this section.

(B) The application for the transfer of moratorium qualification from a vessel that was lost or destroyed during the period January 1, 1989, through December 31, 1994, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty, and a completed application for the transfer of moratorium qualification as specified in paragraph (b)(1) of this section. The vessel owner must show an Alaska State fish ticket to NMFS proving that a landing of a moratorium species was made by December 31, 1996, for the vessel to remain eligible.

(C) The application for the salvage of a vessel lost or destroyed on or after January 1, 1989, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty.

(D) The application for the salvage of a vessel lost or destroyed before January 1, 1989, must include a copy of the U.S. Coast Guard form 2692, Report of Marine Casualty. The vessel owner must show an Alaska State fish ticket to NMFS proving that a landing of a moratorium species was made by December 31, 1996, for the vessel to remain eligible.

Sec. 676.4 Exemptions.

Effective from January 1, 1995, through December 31, 1997; the following

vessels are not subject to the moratorium and may continue to fish during the moratorium in accordance with parts 301, 671, 672, and 675.

(a) A vessel other than a catcher vessel or catcher-processing vessel.

(b) A catcher vessel or catcher/processor vessel that harvests a moratorium species in the Gulf of Alaska and does not exceed 26 feet (7.9 meters) LOA.

(c) A catcher vessel or catcher processor vessel that harvests a moratorium species in the Bering Sea and Aleutian Islands management area and does not exceed 32 feet (9.8 meters) LOA.

(d) A catcher vessel or catcher/processor vessel that meets all the following criteria:

(1) The vessel is a new vessel that is constructed for and used by a Community Development Plan, approved by the Secretary as part of the Community Development Quota programs under Secs. 675.27 and 676.24;

(2) The vessel is designed and equipped to meet specific needs that are described in the Community Development Plan; and

(3) The vessel does not exceed 125 feet (38.1 meters) LOA.

(e) An ineligible catcher vessel or catcher/processor vessel that is engaged in the IFQ sablefish and halibut fixed gear fisheries in accordance with regulations at subpart B of 50 CFR part 676 that retains an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents less than 20 percent of the aggregate amount of sablefish and halibut in round weight equivalents on board.

Sec. 676.5 Permit issuance procedure.

This section is effective from [Date 30 days from date of publication of final rule in the Federal Register], through December 31, 1997.

(a) Groundfish permits. (1) A vessel owner that intends to harvest Gulf of Alaska or Bering Sea and Aleutian Islands management area groundfish from January 1, 1995, through December 31, 1997, must apply for and be issued a moratorium vessel permit from NMFS. An application for a vessel permit can be obtained from NOAA/NMFS, Alaska Enforcement Division, P.O. Box 21767, Juneau, Alaska 99802-1767. A vessel permit will be issued if:

(i) The vessel owner submits a complete vessel permit application to NMFS as required by Secs. 672.4 and 675.4; (ii) The vessel has made a qualifying landing or submits a complete moratorium qualification transfer application with the vessel permit application; and

(iii) The LOA of the vessel, which is specified on the permit application, does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at Sec. 676.3(b)(2) apply, a vessel owner also should submit a complete vessel reconstruction application with the vessel permit application. All permits issued by NMFS will list the maximum LOA applicable for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeal procedures set forth at Sec. 676.6.

(b) Crab permits. (1) A vessel owner that intends to harvest king and Tanner crab fisheries in Federal waters of the Bering Sea and Aleutian Islands Area from January 1, 1995, through December 31, 1997, must apply for and be

issued a crab moratorium vessel permit from NMFS. An application for a vessel permit can be obtained from NOAA/NMFS, Alaska Enforcement Division, P.O. Box 21767, Juneau, Alaska 99802-1767. A vessel permit will be issued if:

(i) The vessel owner submits a complete vessel permit application to NMFS as required by Sec. 671.4;

(ii) The vessel has made a qualifying landing or submits a complete moratorium qualification transfer application with the vessel permit application; and

(iii) The LOA of the vessel that is specified on the permit application does not exceed the maximum LOA for that vessel. If the vessel reconstruction provisions at Sec. 676.3(b)(2) apply, a vessel owner also should submit a complete vessel reconstruction application with the vessel permit application. A permit issued by NMFS will list the maximum LOA for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If NMFS determines that the vessel is not an eligible vessel, the vessel owner will be notified in writing by NMFS that a vessel permit will not be issued and the reasons therefor. If NMFS denies an application for a vessel permit, the applicant may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeals section at Sec. 676.6.

(c) Halibut Licenses.

(1) A vessel owner that intends to harvest halibut in waters in and off the State of Alaska from January 1, 1995, through December 31, 1997, must apply for and be issued an unrestricted vessel license from the International Pacific Halibut Commission. An unrestricted vessel license will be issued if:

(i) The vessel owner submits a complete vessel license application to the International Pacific Halibut Commission as required by part 301;

(ii) The vessel has made a qualifying landing; and

(iii) The LOA of the vessel specified on the license application does not exceed the maximum LOA. An unrestricted vessel license issued by the International Pacific Halibut Commission will list the maximum LOA for that vessel and for any vessel to which the moratorium qualification is transferred.

(2) If the IPHC determines that the vessel does not satisfy the requirements of (c)(1) of this section, the vessel owner will be issued a restricted vessel license applicable only for International Pacific Halibut Commission management area 2A or 2B. If the applicant is issued a restricted vessel license, the applicant may submit additional information to NMFS within 45 days of issuance of the restricted license. NMFS will review the additional information submitted and notify the vessel owner in writing whether an unrestricted vessel license will be issued. If NMFS determines that an unrestricted vessel license should be issued, NMFS will instruct the IPHC to issue an unrestricted vessel license to the vessel owner. If NMFS determines that an unrestricted vessel license should not be issued, and the reasons therefor, the vessel owner may appeal the initial decision within 45 days of issuance of the denial in accordance with the appeal procedures set forth at Sec. 676.6.

(d) Vessel used in the IFQ sablefish and halibut fixed gear fisheries. An owner of a vessel used in the IFQ sablefish and halibut fixed gear fisheries from January 1, 1995, through December 31, 1997, must apply for a groundfish and crab vessel permit. A vessel permit will be issued if the vessel owner submits a complete application to NMFS as required by Secs. 671.4, 672.4, or 675.4. The type of permit issued will be based upon the eligibility of the vessel under the moratorium as follows:

(1) Eligible vessel. A vessel used in the IFQ sablefish and halibut fixed

gear fisheries that is an eligible vessel under the moratorium will be issued an unrestricted groundfish and crab vessel permit. A vessel that is issued an unrestricted groundfish and crab vessel permit may retain amounts of moratorium species other than sablefish and halibut subject to applicable directed fishing standards.

(2) Ineligible vessel. A vessel used in the IFQ sablefish and halibut fixed gear fisheries that is an ineligible vessel under the moratorium will be issued a restricted groundfish and crab vessel permit. A vessel that is issued a restricted groundfish and crab vessel permit must not retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents greater than 20 percent of the aggregate amount sablefish and halibut in round weight equivalents on board.

(e) Letter of authorization-

(1) Vessel permit or license application. If a vessel owner submits a complete application for a vessel permit or license as specified in Secs. 671.4, 672.4 and 675.4, and 50 CFR part 301, NMFS will send a letter of authorization to the vessel owner if NMFS has not issued a written initial decision to the vessel owner on the permit or license application within 30 days of receipt of the application by NMFS. The letter of authorization will expire 75 days after NMFS issues an initial written decision to the vessel owner on the permit or license application.

(2) Filing notice of appeal. If a vessel owner files a notice of appeal with the Regional Director as specified in Sec. 676.6, NMFS will send a letter of authorization to the vessel owner if NMFS has not issued a written final decision to the vessel owner on the appeal within 30 days of the filing of the notice of appeal with NMFS. The letter of authorization will expire 30 days after the Regional Director issues a written final decision on the appeal. Sec. 676.6 Appeals.

This section is effective from [date 30 days after date of publication of final rule in the Federal Register], through December 31, 1997. A vessel owner may file a notice of appeal with the Regional Director within 45 days of the issuance of an initial decision by NMFS that a groundfish and crab vessel permit will not be issued, a restricted halibut license will be issued, or that a restricted groundfish and crab vessel permit will be issued. The notice of appeal must be accompanied by a statement in support of the position of the owner, along with all supporting data and information. The Regional Director will review the records used to make the initial decision and the information submitted with the appeal.

(a) If, during his review, the Regional Director determines that a decision can be made based on a review of the records submitted, the Regional Director will issue a written decision that will be the final administrative decision of the U.S. Department of Commerce.

(b) If, during his review, the Regional Director determines that his decision would benefit from industry expertise beyond that available from a review of the records, then the Regional Director will forward the appeal to the Appeals Board for a recommendation. Subject to Federal and State of Alaska confidentiality regulations, the Appeals Board will review the records used to make the initial decision and the information submitted with the appeal at a public meeting and make a recommendation on the appeal. After receiving the Appeals Board's recommendation from the Council, the Regional Director will consider the recommendation and issue a written decision on the appeal based on his findings and state the reasons for his decision. The decision of the Regional Director is the final administrative decision of the U.S. Department of Commerce.

Sec. 676.7 Prohibitions.

Effective from January 1, 1995, through December 31, 1997, it is unlawful for a person to:

- (a) Submit false or inaccurate information on a vessel permit application;
- (b) Harvest a moratorium species with a vessel that has a LOA greater than the maximum LOA for the vessel;
- (c) Harvest a moratorium species with a vessel that has received an unauthorized transfer of moratorium qualification;
- (d) Fish for sablefish or halibut with IFQ from a vessel with a restricted groundfish and crab vessel permit and retain an aggregate amount of moratorium species other than sablefish and halibut in round weight equivalents greater than 20 percent of the aggregate amount sablefish and halibut in round weight equivalents on board; and
- (e) Violate any other provision of subpart A of 50 CFR part 676.