

**50 CFR Parts 671, 672, 675, and 676**

[Docket No. 950508130-5130-01; I.D. 050195A]

RIN 0648-AH62

**Limited Access Management of Federal Fisheries In and Off Alaska; Groundfish and Crab Fisheries Moratorium**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a temporary moratorium on the entry of new vessels into the groundfish and crab fisheries under Federal jurisdiction in the Bering Sea and Aleutian Islands (BSAI) area, and the groundfish fisheries under Federal jurisdiction in the Gulf of Alaska (GOA). This action is proposed by the North Pacific Fishery Management Council (Council) to curtail increases in fishing capacity and provide industry stability while the Council and NMFS prepare, review, and, if approved, implement a comprehensive management plan for these fisheries. This action is intended to promote the conservation and management objectives of the Council and the Magnuson Fishery Conservation and Management Act (Magnuson Act).

**DATES:** Comments must be received at the following address by June 1, 1995.

**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 the proposed Fishery Management Plan (FMP) amendments 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:** Jay Ginter, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

Domestic groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and the BSAI are managed by NMFS under the GOA and BSAI groundfish FMPs. The commercial harvest of king and Tanner crabs is managed under the Fishery Management Plan 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 primarily by regulations at 50 CFR part 672. The FMP for the BSAI groundfish fisheries is implemented primarily by regulations at 50 CFR part 675. 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. Other Federal regulations that also affect the groundfish and crab fisheries are set out at 50 CFR parts 620, 676, and 677.

This action would implement proposed revisions of Amendment 23 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 28 to the Fishery Management Plan for the Groundfish of the Gulf of Alaska, and Amendment 4 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. These revisions would establish temporary entry controls until more formal controls on harvesting capacity can be implemented. The Council has been aware of the fishery management problems caused by excess harvesting capacity or over-capitalization since the late 1970's. The Council first recommended a moratorium on new entry into the Alaska halibut fishery in 1983. This proposal was disapproved by NMFS because it would not have resolved the basic problem of overcapitalization in the halibut fishery. 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 established its Future of Groundfish Committee in 1987, which examined management problems in the groundfish, crab, and halibut fisheries off Alaska. The Committee 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.

The Council, concerned that overcapitalization may be exacerbated by speculative entry into the fisheries during its discussion of limited access alternatives, requested NMFS to publish a control date notice. This notice,

announcing a control date of September 15, 1990, was published in the **Federal Register** on September 5, 1990 (55 FR 36302) and corrected on September 13, 1990 (55 FR 37729). The notice (a) informed the public of the Council's intention to develop measures to limit access, and (b) established the 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 also 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 in September 1991 to change the final "due consideration" date to February 9, 1992.

Since 1990, the Council has contended with difficult public policy issues related to overcapitalization and its attendant resource allocations. Although the Council continues to develop a comprehensive rationalization plan (CRP) to resolve most of these problems, transition from an open access management system to a limited access, market-based, allocation system for public fishery resources is difficult and time consuming. For example, the Council began work on a limited access system for the sablefish (and later halibut) longline fisheries in 1987. The Council proposed an individual fishing quota (IFQ) program for these fisheries in 1991. NMFS approved the IFQ program in 1993 and fishing under the program began in 1995. For other groundfish and crab fisheries, the Council has proposed the moratorium as a temporary measure to slow significant increases in the harvesting capacity of the groundfish and crab fishing fleets until a CRP can be implemented.

This proposed moratorium is not expected to resolve the problem of excess harvesting capacity in the groundfish and BSAI crab fisheries. This proposed moratorium would stop the entry of a potentially unlimited number of vessels into these fisheries that would exacerbate overcapitalization problems and confound the ultimate development and approval of a CRP. As an interim management measure, this proposed moratorium would provide temporary industry stability by freezing the number of vessels allowed to participate in the affected fisheries and limiting increases in fishing capacity. This could

have a limited effect of increasing economic benefits to fishermen and reducing the risk of overfishing.

The Council originally proposed the moratorium at its meeting in June 1992. In August 1992, and in January 1993, the Council clarified its moratorium proposal. The Council prepared an EA/RIR/IRFA for the proposal dated April 28, 1994, and NMFS' review of the proposal was initiated on May 3, 1994. A notice of availability of the proposed FMP amendments and corresponding analysis was published in the **Federal Register** on May 12, 1994 (59 FR 24679), which started a 60-day public comment period on these documents. A concurrent 45-day public comment period on proposed implementing rules for the moratorium began on May 31, 1994 (59 FR 28827, June 3, 1994).

The Council's original moratorium proposal was disapproved by NMFS on August 5, 1994 (59 FR 43534, August 24, 1994). In a letter to the Council chairman on that date, the Director, Alaska Region, NMFS (Regional Director), stated that the principal reasons for the disapproval were that certain provisions of the moratorium would have allowed significantly more vessels to qualify for a moratorium permit than participate on average in any year, thereby undermining the expressed purpose of the moratorium. The provisions were inconsistent with several national standards of the Magnuson Act and other applicable law. Specifically, the inconsistent provisions were:

a. The proposed qualifying period of January 1, 1980, through February 9, 1992, would have allowed about 13,500 vessels to qualify to participate in the fisheries under the moratorium when approximately 2,500 vessels was the annually permitted fleet size in the groundfish and BSAI crab fisheries in recent years;

b. The crossover provision, which would have allowed a vessel to cross over from one moratorium fishery into another moratorium fishery in which it had no previous qualifying history while denying entry to a vessel currently active in one of the fisheries. The crossover provision would have exacerbated overcapacity problems;

c. The Council had not adequately considered present participation and other factors required to be considered in developing a limited access system by the Magnuson Act; and

d. An appeals process for the moratorium, which was redundant because a similar limited access appeals process was already established for the IFQ program.

Section 304(b)(3) of the Magnuson Act provides the Council an opportunity to revise the disapproved moratorium FMP amendment and submit a revised proposal for expedited review by NMFS. The Council decided to take this action at its September and December 1994 meetings. NMFS has not yet made a final determination whether the revised moratorium FMP amendments are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. A brief description of the Council's September and December revisions follows.

The Council revised its original moratorium proposal at its meeting in September 1994, by:

1. Changing the qualifying period to January 1, 1988, through February 9, 1992;

2. Substituting the appeals procedure developed for the halibut and sablefish IFQ program for a special moratorium appeals process; and

3. Removing the halibut and sablefish longline fisheries from the moratorium.

The Council prepared a supplement to the analysis for the original moratorium proposal assessing the effects of the Council's proposed revisions. The supplemental analysis, dated February 13, 1995, indicates that the Council's September 1994 revisions to the proposed moratorium would substantially reduce the potential moratorium fleet from 13,350 vessels to 4,144 vessels. The analysis estimates the revised fleet size to be about 180 percent of the average number of vessels that operated each year 1988 through 1991 in the groundfish and crab fisheries. This change in the qualifying period also gave greater weight to a vessel that participated in these fisheries in those years as opposed to a vessel that may have participated before 1988 but not in later years 1988 through February 9, 1992. A demonstration of recent participation generally indicates a vessel's greater dependence on a fishery than a vessel that has not participated in recent years. The Council decided not to extend the qualifying period from February 9, 1992, through mid-June 1994. The Council believed its control date notice of 1990 and its original action on a proposed moratorium in 1992 adequately alerted fishermen about the risks of entering a vessel in these fisheries for the first time. The analysis indicates that not extending the qualifying date through mid-June 1994 eliminated 494 vessels that entered the fisheries during the period between the cutoff date of February 9, 1992, and mid-June 1994. About 3,600 additional vessels were eliminated from the potential moratorium fleet by removing

those that fished only for halibut and sablefish with longline gear. These vessels could continue to operate in these longline fisheries under the IFQ program if their owners/operators hold a valid IFQ permit. A landing of only halibut or sablefish caught with longline gear during the qualifying period would not be considered a groundfish landing to qualify a vessel for the proposed moratorium.

In September 1994, the Council decided not to change the crossover provision. The Council reasoned that its intent was to create a single moratorium for groundfish and BSAI crab fisheries within which qualified vessels would be free to move among fisheries as they have done under the open access management system. The flexibility the crossover provision gave to vessels in one or more of these fisheries was considered by the Council to be a critically important part of its moratorium proposal.

In December 1994, NMFS informed the Council that the crossover provision could continue to be an impediment to approval of the revised moratorium proposal. The Regional Director suggested a way to overcome this problem by providing for limited crossovers based on certain criteria. The Council approved this change to the crossover provision on December 11, 1994.

The revised moratorium proposal would allow a moratorium-qualified vessel to cross over between one moratorium fishery (e.g., BSAI crab fishery) and another moratorium fishery (e.g., the groundfish fishery, or vice versa) during the moratorium if:

i. The vessel had made a legal landing in both fisheries during the qualifying period; or

ii. The vessel uses the same type of fishing gear in the second fishery that it used in the first fishery to qualify for the moratorium; or

iii. The vessel qualified for the moratorium in one fishery and, during the period February 9, 1992, through December 11, 1994, made a legal landing in the other moratorium fishery and uses the same type of fishing gear it used during that period.

The following paragraphs describe how NMFS would implement this limited crossover provision and provide a general description of the proposed moratorium program.

#### **Proposed Vessel Moratorium Program**

The proposed moratorium program, if approved, would limit access to the groundfish and BSAI crab resources off Alaska to a vessel that has been issued a moratorium permit by NMFS. A

moratorium permit would be required in addition to any other permit or license required by Federal or state regulations unless those requirements are specifically waived. NMFS is considering alternatives that would simplify the permit application and issuance process, including a unified Federal permitting system for groundfish and crab.

### 1. Vessels Affected by the Proposed Moratorium

The proposed moratorium would require a moratorium permit for a vessel that catches and retains any species of king and Tanner crabs whose commercial fishing is governed by the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area and its implementing regulations at 50 CFR part 671 ("moratorium crab species"). A moratorium permit also would be required of a vessel that conducts directed fishing for any groundfish species whose commercial fishing is governed by the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, and the Fishery Management Plan for Groundfish of the Gulf of Alaska and their respective implementing regulations at 50 CFR parts 672 and 675 ("moratorium groundfish species"). Moratorium crab species and moratorium groundfish species are collectively referred to as "moratorium species." A vessel that catches and retains moratorium crab species and is issued a moratorium permit would be required to have any Federal or state permits specified in the applicable regulations. However, a vessel that conducts directed fishing for any moratorium groundfish species and is issued a moratorium permit would not be required to have a Federal groundfish permit.

A vessel "directed fishing" or targeting on groundfish species would be required to have a moratorium permit, unless the vessel is exempted, as described below. The term "directed fishing" is defined in the groundfish FMPs' implementing regulations at 50 CFR parts 672 and 675. Basically, this term establishes criteria by which NMFS may determine which species of groundfish a vessel has been targeting when any fish are on board the vessel. A vessel that takes only incidental catches of moratorium groundfish species in the EEZ would not be required to have a moratorium permit; however, it would be required to have a Federal groundfish permit. A vessel without a moratorium permit in the EEZ

would be required to discard any catch of a moratorium groundfish species that exceeds the maximum retainable bycatch amount specified in the directed fishing definition in parts 672 and 675. Crabs are prohibited species in the groundfish fishery, which means that any bycatch of crab must be immediately returned to the sea.

The Council specifically exempted certain vessels from the proposed moratorium. Such vessels would not be required to obtain moratorium permits. The rationale for these exemptions was provided in the proposed rule for the original moratorium proposal (59 FR 28827, June 3, 1994). Other existing Federal and state permit requirements would continue to apply to exempted vessels. A vessel within one of the following categories would be exempt from the moratorium and would not be required to have a moratorium permit (but may be required to have a Federal groundfish permit):

- A vessel that is not used to catch fish (e.g., processor vessel, tender, or support vessel); or
- A vessel that does not catch and retain moratorium crab species or that does not conduct directed fishing for moratorium groundfish species; or
- A vessel that catches and retains moratorium crab species or that conducts directed fishing for moratorium groundfish species only within state waters; or
- A vessel that conducts directed fishing for moratorium groundfish species in the GOA and that does not exceed 26 ft (7.9 m) in length overall (LOA) providing such vessel length is not increased beyond this LOA limit; or
- A vessel that catches and retains moratorium crab species or that conducts directed fishing for moratorium groundfish species in the BSAI area and that does not exceed 32 ft (9.8 m) LOA providing such vessel length is not increased beyond this LOA limit; or
- A vessel that catches IFQ halibut or IFQ sablefish or halibut or sablefish under the Western Alaska Community Development Quota (CDQ) program; or
- A vessel that, after the implementation of the CDQ program for pollock on November 18, 1992 (57 FR 54937, November 23, 1992) is specifically constructed and used to harvest pollock in accordance with a Community Development Plan (CDP), is specially designed and equipped to meet specific needs that are described in the CDP, and is no greater than 125 ft (38.1 m) LOA.

### 2. Moratorium Permit Qualifications

Generally, a vessel would be qualified to receive a moratorium permit, if it made a legal landing of any moratorium species during the qualifying period of January 1, 1988, through February 9, 1992. The exceptions to this general rule are described below.

A "legal landing" would be defined as any amount of a moratorium species that was landed in compliance with Federal and state regulations in effect at the time of the landing. The primary effect of this definition would be to limit landing claims to those that could be verified through Federal and state records of required landing reports. A vessel owner who alleges that government records are in error would have to produce a copy of a valid state fish ticket or other required report as evidence of participation of the vessel in a fishery for a moratorium species during the qualifying period.

A vessel for which acceptable evidence exists of a legal landing of a moratorium species during the qualifying period would be considered by NMFS to have moratorium qualification, except if that vessel is exempt from the moratorium as described above. For example, a vessel that is less than or equal to 26 ft (7.9 m) LOA and that made a legal landing of moratorium species caught only in the GOA would not have moratorium qualification. Likewise, a vessel that made a legal landing only of halibut and sablefish caught with fixed gear during the qualifying period would not have moratorium qualification.

An exempt vessel may continue to fish for moratorium species, if it has on board a groundfish permit issued by NMFS or a crab permit issued by the State of Alaska pursuant to existing regulations. For example, a Federal groundfish permit would be required of any vessel that participates in the EEZ groundfish fisheries off Alaska, including a processor vessel, a support vessel, a small vessel exempted from the moratorium, as well as a vessel that harvests IFQ sablefish. Issuance of a groundfish permit would not require moratorium qualification. By not allowing such a vessel a moratorium qualification, the vessel would be prevented from transferring moratorium qualification to another vessel that could increase the overall harvesting capacity of the fleet counter to the Council's objective in proposing the moratorium.

A vessel that operates under the IFQ program and that does not have moratorium qualification would be able to retain bycatch amounts of

moratorium groundfish species, such as Pacific cod and rockfish, up to the maximum allowable retention limits set forth at 50 CFR parts 672 and 675. The retention of these species is required under the IFQ program regulations at 50 CFR part 676, unless retention is otherwise restricted or prohibited by Federal or state regulations. Hence, a moratorium permit would not be required of vessels used by fishermen with IFQs for halibut or sablefish.

A moratorium permit would be issued to the person who owns a moratorium-qualified vessel after approval of an application for a moratorium permit for that vessel. Moratorium qualification would be a characteristic of a vessel that stays with the vessel, except as described below. NMFS would maintain a database of vessels that are moratorium-qualified according to official landings records. If the owner of a vessel that would require a moratorium permit applies for one, NMFS may issue a permit if the vessel is on the list of moratorium-qualified vessels and is within its maximum LOA. Moratorium permits would be valid only for the year in which they are issued. A vessel owner who receives a moratorium permit for a vessel one year may not necessarily receive one for the same vessel in a succeeding year if the vessel loses its moratorium qualification.

The moratorium qualification of a vessel could be lost if it is transferred to another vessel or person, or if the vessel's LOA is increased to exceed the maximum LOA for that vessel. A vessel's maximum LOA is defined in the proposed rule as the greatest LOA that the vessel, or its replacement, may have and remain qualified for a moratorium permit. The maximum LOA of a vessel that is less than 125 ft (38.1 m) LOA would be either 1.2 times the vessel's original qualifying length, or 125 ft (38.1 m), whichever is less. The maximum LOA of a vessel that is 125 ft (38.1 m) or greater would be equal to its original qualifying length. The original qualifying length of a vessel would be the LOA of the vessel on or before June 24, 1992. This limited length increase allowance, known as the "20 percent rule," is intended to provide an owner of a smaller vessel with an opportunity to increase the vessel's stability by widening and lengthening the hull. The 20 percent rule could increase safety margins for a vessel, although it also would provide an opportunity to increase its fishing capacity. The Council recognized this possibility, and limited any vessel length increases to a vessel less than 125 ft (38.1 m) LOA. The Council made this decision on June

24, 1992, to discourage a vessel owner from increasing the vessel's length substantially between that date and the potential implementation date of the moratorium. Any violation of the 20 percent rule would nullify the moratorium qualification of the vessel that exceeds its maximum LOA.

### 3. Crossovers

The Council's original moratorium proposal would not have limited the ability of a vessel that qualified for a moratorium permit because of a legal landing, for example, of a moratorium crab species to cross over to a fishery for a moratorium groundfish species, even if it had no previous landing history in a groundfish fishery. For the reasons described above, the Council decided at its meeting in December 1994, to limit crossovers. The rationale for this revision is to allow a vessel to move between the groundfish and BSAI crab fisheries as intended in the original moratorium proposal, but to limit that movement based on the type of fishing gear used by the vessel either to qualify for the moratorium or during the period of time immediately following the qualifying period and before December 11, 1994. This crossover limitation recognizes the basic similarity of fishing gear used in the BSAI crab fisheries and some groundfish fisheries. It also recognizes the fact that some moratorium-qualified vessels crossed over to enter a new moratorium fishery after the cutoff date of February 9, 1992, based on the Council's original moratorium proposal. These vessels would be allowed to continue to operate in these fisheries under the moratorium but would be restricted to using the fishing gear used from February 10, 1992, through December 11, 1994, the date of the Council's decision on the revised moratorium proposal.

Either of two conditions would allow a moratorium-qualified vessel that had a legal landing during the qualifying period only in the groundfish fishery to cross over under the moratorium as a new vessel in the BSAI crab fishery (or vice versa):

1. The vessel could cross over into the new fishery providing it uses only the same basic (authorized) fishing gear that it used to qualify for the moratorium; or
2. The vessel could cross over into the new fishery providing it had made a legal landing in that fishery during the period February 10, 1992, through December 11, 1994, and it uses only the same basic (authorized) fishing gear that it used during that period.

*Example 1.* A vessel that made a legal landing in the BSAI crab fisheries during the qualifying period would be

eligible for a moratorium permit to operate in that fishery and in the BSAI or GOA groundfish fisheries using pot gear where that gear is authorized. The only legal fishing gear in the BSAI crab fisheries is pot gear. Therefore, this vessel would be limited in crossing over into the groundfish fisheries to using pot gear.

*Example 2.* A vessel that made a legal landing in the BSAI or GOA groundfish fisheries during the qualifying period would be eligible for a moratorium permit to operate in that fishery using any authorized fishing gear for groundfish. The same vessel also made a legal landing in the BSAI crab fishery during the period February 10, 1992, through December 11, 1994. Therefore, this vessel also would be eligible for a moratorium permit to operate in the BSAI crab fishery, and its flexibility to move between fisheries using any authorized gear would be unlimited.

*Example 3.* A vessel that made a legal landing in the BSAI crab fisheries during the qualifying period would be eligible for a moratorium permit to operate in that fishery and in the BSAI or GOA groundfish fisheries using pot gear where that gear is authorized. The same vessel also made a legal landing in the groundfish fisheries using hook-and-line gear during the period February 10, 1992, through December 11, 1994. Therefore, this vessel also would be eligible for a moratorium permit to operate in the groundfish fisheries using hook-and-line gear. This vessel would not be eligible to cross over into the groundfish fishery using trawl gear under the moratorium, but would be limited to fishing for groundfish with either pot or hook-and-line gear.

This revision to the proposed moratorium would require NMFS to issue moratorium permits with fishery-specific fishing gear endorsements. A moratorium permit would not be valid without at least one gear endorsement. Four types of fishery/gear endorsements are proposed that comprise categories of fishing gear that are specifically authorized in Federal regulations (with respect to groundfish) or in State of Alaska regulations (with respect to crab). These fishery/gear endorsement categories are as follows:

- a. Groundfish/trawl, includes groundfish pelagic and nonpelagic trawl gears as defined at 50 CFR part 672;
- b. Crab/pot, includes crab pot gear as defined in the Alaska Administrative Code at title 5, chapters 34 and 35;
- c. Groundfish/pot, includes groundfish longline pot and pot-and-line gears as defined at 50 CFR part 672; and

d. Groundfish/hook, includes groundfish hook-and-line and jig gears as defined at 50 CFR part 672.

The Regional Director would determine the appropriate fishery/gear endorsement for a moratorium permit based on the permit application received and existing landings records and vessel LOA. A moratorium permit may be issued for the groundfish fishery or the BSAI crab fishery or both. In addition, a moratorium permit may be issued with one or more of the fishery/gear endorsements listed above. For example, a moratorium-qualified vessel that made a legal landing of BSAI crab during the qualifying period would be issued a moratorium permit to fish for groundfish and BSAI crab with a pot gear endorsement. Alternatively, a moratorium-qualified vessel that made a legal landing of groundfish using trawl gear during the qualifying period would be issued a moratorium permit to fish for groundfish with all groundfish gear endorsements, but that vessel would not be permitted to fish for BSAI crabs unless it also had made a legal landing in the BSAI crab fishery during the period February 10, 1992, through December 11, 1994. This restriction is necessary to carry out the proposed limited crossover policy.

#### 4. Transferability

The moratorium qualification issued to a vessel would be transferrable under certain conditions. All such transfers would have to be approved by the Regional Director before they would be effective. A vessel that loses its moratorium qualification due to a transfer would become disqualified to participate in any moratorium fishery on the effective date of the transfer. The purpose of providing for transfers is to allow vessels to make limited improvements or to replace existing vessels in the moratorium fisheries. Restrictions on transfers are necessary to limit the potential fishing capacity resulting from vessel improvements or replacements. A moratorium qualification may be transferred without a moratorium permit if, for example, no such permit has been issued based on that qualification. A moratorium permit would not be transferrable during the year for which it is issued without also transferring the moratorium qualification on which it is based.

Moratorium qualification would be assumed to remain attached to the vessel that made a legal landing of moratorium species during the qualifying period, unless otherwise specified in a purchase agreement or contract. Hence, NMFS would presume that the owner of a moratorium-

qualified vessel at the time of a moratorium permit application also possesses the moratorium qualification for that vessel. The moratorium qualification of a vessel may be transferred from the owner of the vessel to another person by mutual agreement. For example, the moratorium qualification of a vessel, commonly referred to as the vessel's "fishing rights," may be retained by the vessel's owner to liquidate independently of the vessel. A vessel owner also may choose to retain the moratorium qualification of his or her vessel when it is sold, lost or destroyed, so that he/she can apply it to a replacement vessel. Regardless of the reason for transferring the moratorium qualification, NMFS would require valid documentation of the transfer before the moratorium qualification could be used as a basis for issuing a moratorium permit.

A moratorium permit would not be valid without a valid moratorium qualification. Moratorium permits would be valid only in the calendar year for which they are issued. Hence, the validity of a vessel's moratorium qualification would be confirmed at least annually, or whenever a moratorium permit application is submitted. The validity of a vessel's moratorium qualification would depend on its compliance with the 20 percent rule described above, with respect to the vessel's maximum LOA. Each moratorium qualification would be characterized by a maximum LOA. A transfer of a vessel's moratorium qualification to a vessel that exceeds the maximum LOA of the moratorium qualification would not be approved by NMFS, for example, and no moratorium permit would be issued.

A moratorium permit would not be separable from the moratorium qualification on which the permit is based. A moratorium qualification transfer by itself would automatically invalidate any moratorium permit that had been based on that moratorium qualification. Fishery and gear endorsements could not be separated and transferred independently. For example, a moratorium permit that authorizes a vessel to harvest moratorium species of groundfish and crab with pot gear could not be separated into a groundfish/pot permit and a crab/pot permit. Likewise, gear endorsements could not be separately transferred from a moratorium permit. For example, the hook endorsement on a groundfish/trawl, pot, and hook permit would not be transferrable.

*Replacement or salvage of a lost or destroyed vessel:* A cutoff date of January 1, 1989, is proposed for

determining the replacement of a moratorium-qualified vessel that was lost or destroyed. The moratorium qualification of a vessel that was lost or destroyed before that date would no longer be valid for purposes of a moratorium permit, unless salvage of the vessel had started before June 24, 1992. The Council reasoned that a vessel owner who lost a vessel before January 1, 1989, would have replaced the vessel before the end of the qualifying period if the owner intended to continue participation in the moratorium fisheries.

The moratorium qualification of a vessel that was lost or destroyed on or after January 1, 1989, but before the effective date of the moratorium, may be valid and transferred to a replacement vessel if the LOA of the replacement vessel does not exceed the maximum LOA of the moratorium-qualified vessel that was lost, and the replacement vessel makes a legal landing of a moratorium species within the first 2 years (730 days) after the effective date of the moratorium. At the beginning of the third year of the moratorium, NMFS would determine whether the replacement vessel made a legal landing of a moratorium species. If not, then no moratorium permit would be issued to the vessel that year. The moratorium qualification of a vessel that is lost or destroyed after the effective date of the moratorium may be transferred to a replacement vessel, providing it does not exceed the maximum LOA of the moratorium-qualified vessel that was lost.

The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, may be valid for the vessel if salvage operations began on or before June 24, 1992, the salvaged vessel does not exceed its maximum LOA, and the salvaged vessel makes a legal landing of a moratorium species within the first 2 years (730 days) after the effective date of the moratorium. A moratorium-qualified vessel that was lost or destroyed on or after January 1, 1989, may be salvaged and may be eligible for a moratorium permit if the salvaged vessel does not exceed its maximum LOA and the moratorium qualification of the vessel has not been transferred.

*Reconstruction:* Vessel reconstruction means a change in the original qualifying length of a moratorium-qualified vessel. The moratorium qualification of a vessel reconstructed in a manner that changes its LOA would be controlled under the moratorium by the 20 percent rule described above and the dates when reconstruction was started and finished. The LOA of a moratorium-

qualified vessel could be changed to exceed the vessel's maximum LOA without invalidating its moratorium qualification only if reconstruction of the vessel began before June 24, 1992, was completed after that date, and a transfer of the vessel's moratorium qualification or moratorium permit to the reconstructed vessel is approved by NMFS. The revised maximum LOA of such a vessel would be established as equal to the reconstructed LOA even if the reconstructed LOA were less than 125 ft (38.1 m). The purpose for this exception to the 20 percent rule is to prevent the disqualification of a vessel that was undergoing reconstruction on the date that the Council initially acted to recommend its original moratorium proposal. The Council decided that such a vessel should be allowed to participate in the fisheries under the moratorium, but that it should not be allowed any additional length increases under the 20 percent rule. A vessel that completed reconstruction before June 24, 1992, would have its LOA on that date used as a basis for determining its maximum LOA, and a vessel that started reconstruction after June 24, 1992, would have its LOA restricted by the 20 percent rule.

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.

##### 5. Administration

The moratorium would be implemented by limiting the issuance of a moratorium permit to only a moratorium-qualified vessel. The Restricted Access Management Division within the Alaska Region, NMFS, would administer the moratorium program by maintaining a database of moratorium-qualified vessels, issuing, receiving, and reviewing permit and transfer applications, making initial determinations of eligibility, and issuing moratorium permits. This work would

be conducted in parallel with the issuance of a Federal groundfish permit to each vessel that would not need a moratorium permit but that otherwise would participate in the groundfish fisheries in the EEZ (i.e., a moratorium-exempt vessel such as a processor, support vessel, and a small vessel). Federal groundfish permits would continue to be unlimited and issued without cost on receipt of an application. A moratorium permit would be required in lieu of a Federal groundfish permit for vessels subject to the moratorium. A vessel that intended to harvest moratorium crab species in the BSAI area would need a moratorium permit in addition to all permits and licenses required by the State of Alaska.

An application for a moratorium permit could be submitted at any time. The permit would be valid only through December 31 of the year for which the permit is issued. NMFS expects that most moratorium permit applications would be submitted in November and December for the succeeding fishing year. An approved moratorium permit would be issued to the owner of a moratorium-qualified vessel after review and processing of the permit application. The moratorium permit application would be similar in form to the Federal groundfish application currently in use.

The primary test for approval of a moratorium permit application for a vessel would be demonstration of the vessel's moratorium qualification and that its LOA is less than or equal to the maximum LOA associated with the moratorium qualification. As stated above, moratorium qualification would be assumed to remain with a vessel that made a legal landing of any moratorium species during the qualifying period. Otherwise, a valid contract or agreement to transfer a vessel's moratorium qualification or retain it when the vessel is transferred would be required to demonstrate ownership of the moratorium qualification. Determination of a vessel's maximum LOA would be based on Federal or state permit or registration documents dated on or before June 24, 1992 that demonstrate the original qualifying length of the vessel. If these documents are not available or contested, NMFS may request the vessel owner to produce marine survey, builders plans, or other third-party documentation of the vessel's length on or before June 24, 1992.

An application for transfer of moratorium qualification or a moratorium permit also could be submitted at any time, and both applications could be submitted

simultaneously. The primary test for approval of a transfer would be demonstration of agreement to the transfer by the owners and would-be receivers of the moratorium qualification/permit, and proof that the vessel that would receive the moratorium qualification/permit is less than or equal to the maximum LOA associated with the moratorium qualification.

An initial administrative determination to deny the issuance of a moratorium permit would be explained in writing to the permit applicant, and the denial could be appealed following the procedures set forth at 50 CFR 676.25. A written appeal would have to be submitted to the Alaska Region, NMFS, within 60 days after the date that the determination was made. An initial administrative determination to deny an application for a permit would include a letter of authorization to the applicant authorizing the affected vessel to operate as if the application were approved pending appeal. The temporary authority granted by the letter of authorization would expire on the effective date of the final agency action on the appeal. The final agency action on the appeal, for purposes of judicial review, would occur at the end of the 60-day appeal period if no appeal were filed, or 30 days after the appellate officer's decision is issued, except as provided at 50 CFR 676.25. No appeal is provided for a denial of a transfer of moratorium qualification or moratorium permit. The maximum LOA restrictions would be too easily circumvented and the purpose of the moratorium undermined, if appeals of transfer denials were allowed.

##### Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time NMFS has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Assistant Administrator for Fisheries, NOAA, has 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 of the moratorium prepared by the Council, 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 1977-91, total participation increased only 180 vessels per year, on average, because 500 to 1,000 vessels annually exited the fisheries.

The revised moratorium proposal would reduce the potential fleet of vessels qualified to fish under the moratorium from 13,350 under the original proposal to 4,144 under the revised proposal. The number of qualifying vessels under the revised proposal is about 180 percent of the average number of vessels that operated in the affected fisheries each year 1988-91. Roughly 25 percent of this potential qualifying fleet is small vessels that would be exempted and permitted to operate in the moratorium fisheries, regardless of the moratorium. The proposed moratorium would prevent the participation of vessels that entered the affected fisheries for the first time between February 9, 1992, and the end of 1994, or that made landings only in the fixed-gear fisheries for halibut and sablefish. An estimated 973 vessels would not qualify for a moratorium permit for these reasons, unless they received transferred moratorium qualification. This number includes about 324 vessels that are 26 ft (7.9 m) in length or less that would be able to participate with a normal Federal groundfish permit. Large vessels over 90 ft (27.4 m) in length have the greatest fish harvesting capacity, and the greatest potential impact on the fishery resources. About 28 large vessels that entered the fisheries after February 9, 1992, would not qualify for a moratorium permit. 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 (44 U.S.C. 3501 *et seq.*) that have been approved by the Office of Management and Budget (OMB) (OMB control number 0648-0282). This approval expires August 31, 1997, and was based on the original moratorium proposal submitted in 1994. The revised moratorium proposal would affect fewer vessels. Therefore, the paperwork burden would be somewhat less than originally estimated for the original collection-of-information request. These paperwork burdens include the time for reviewing the instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information that pertains to permit, appeals, and transfer applications. Send comments regarding this paperwork burden 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, OMB, Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

This action has been determined to be not significant for purposes of E.O. 12866.

#### List of Subjects

##### 50 CFR Part 671

Fisheries, Fishing, Reporting and recordkeeping requirements.

##### 50 CFR Parts 672 and 675

Fisheries, Recordkeeping and reporting requirements.

##### 50 CFR Part 676

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 9, 1995.

**Gary Matlock,**

*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", in alphabetical order, to read as follows:

##### § 671.2 Definitions.

\* \* \* \* \*

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

\* \* \* \* \*

*Tanner crab* means *Chionoecetes bairdi*; snow crab, *C. opilio*; grooved Tanner crab, *C. tanneri*; triangle Tanner crab, *C. angulatus*; or any hybrid of these Tanner crab species.

3. Section 671.3 is added to read as follows:

##### § 671.3 Relation to other laws.

(a) *Foreign fishing.* Regulations governing foreign fishing for groundfish in the Gulf of Alaska are set forth at § 611.92 of this chapter. Regulations governing foreign fishing for groundfish in the Bering Sea and Aleutian Islands

Management Area are set forth at § 611.93 of this chapter.

(b) *King and Tanner crab.* Regulations governing the conservation and management of king and Tanner crab also are found in the Alaska Administrative Code at title 5, chapters 34, 35, and 39.

(c) *Halibut fishing.* Regulations governing the conservation and management of Pacific halibut are set forth at part 301 of this title and part 676 of this chapter.

(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 parts 620, 672, 675, and 676 of this chapter.

(e) *Limited access.* Regulations governing access to commercial fishery resources are set forth at part 676 of this chapter.

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

(g) *Research plan.* Regulations governing elements of the North Pacific Fisheries Research Plan are set forth at part 677 of this chapter.

4. Section 671.4 is revised to read as follows:

##### § 671.4 Permits.

This section is effective from January 1, 1996, through December 31, 1998, unless otherwise specified. In addition to any other permits or licenses that may be required by Federal or state regulations, the owner of a vessel of the United States must obtain a moratorium permit issued under 50 CFR part 676 before using the vessel to catch and retain king or Tanner crab in the Bering Sea and Aleutian Islands Area unless specifically exempt under 50 CFR part 676.

#### 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, paragraph (f) is added to read as follows:

##### § 672.3 Relation to other laws.

\* \* \* \* \*

(f) *Crab fishing.* Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at parts 671 and 676 of this chapter, and

in the Alaska Administrative Code at title 5, chapters 34, 35, and 39.

7. Section 672.4, paragraph (a) is revised to read as follows:

**§ 672.4 Permits.**

(a) *General.* This section is effective from January 1, 1996, through December 31, 1998, unless otherwise specified. Unless specifically exempt under 50 CFR part 676, the owner of a vessel of the United States must obtain a moratorium permit issued under 50 CFR part 676 before using the vessel to conduct directed fishing for moratorium groundfish species, as defined at § 676.2 of this chapter, in the Gulf of Alaska. The owner of a vessel of the United States that is not required to have a moratorium permit because the vessel is specifically exempt under § 676.3 of this chapter must obtain a groundfish permit issued under this part before using the vessel to fish for groundfish in the Gulf of Alaska. Such permits shall be issued without charge.

\* \* \* \* \*

**PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS 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, paragraph (f) is added to read as follows:

**§ 675.3 Relation to other laws.**

\* \* \* \* \*

(f) *Crab fishing.* Regulations governing the conservation and management of king and Tanner crab in the Bering Sea and Aleutian Islands Area are set forth at parts 671 and 676 of this chapter, and in the Alaska Administrative Code at title 5, chapters 34, 35, and 39.

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

**§ 675.4 Permits.**

(a) *General.* This section is effective from January 1, 1996, through December 31, 1998, unless otherwise specified. The owner of a vessel of the United States must obtain a moratorium permit issued under 50 CFR part 676 before the vessel is used to conduct directed fishing for moratorium groundfish species, as defined at § 676.2 of this chapter, in the Bering Sea and Aleutian Islands management area, unless specifically exempt under § 676.3 of this chapter. The owner of a vessel of the United States that is not required to have a moratorium permit because the vessel is specifically exempt under § 676.3 of this chapter must obtain a groundfish permit issued under this part

before using the vessel to fish for groundfish in the Bering Sea and Aleutian Islands management area. Such permits shall be issued without charge.

\* \* \* \* \*

**PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF ALASKA**

11. The authority citation for part 676 continues to read as follows:

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

12. Subpart A is amended by adding §§ 676.1 through 676.6 to read as follows:

**Subpart A—Moratorium on Entry**

Sec.

- 676.1 Purpose and scope.
- 676.2 Definitions.
- 676.3 Moratorium permits.
- 676.4 Transfer of moratorium permits.
- 676.5 Permit application procedure.
- 676.6 Prohibitions.
- 676.7–676.9 [Reserved]

**Subpart A—Moratorium on Entry**

**§ 676.1 Purpose and scope.**

This subpart is effective from [date 30 days after date of publication of the final rule in the **Federal Register**], through December 31, 1998.

(a) This subpart implements a vessel moratorium program developed by the North Pacific Fishery Management Council and approved by NMFS.

(b) Regulations in this subpart govern:

- (1) The issuance of Federal moratorium permits to limit the number and size of vessels 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; and
- (2) The issuance of Federal moratorium permits to limit the number and size of vessels in the commercial fisheries for king and Tanner crabs in that portion of the Bering Sea and Aleutian Islands Area over which the United States exercises exclusive fishery management authority.

**§ 676.2 Definitions.**

In addition to the terms in the Magnuson Act and in parts 620, 671, 672, and 675 of this chapter, the terms in this subpart have the following meanings:

*Catcher vessel* means, with respect to moratorium groundfish species, a vessel as defined at parts 672 and 675 of this chapter, or a vessel that is used to catch,

take, or harvest moratorium crab species that are retained on board as fresh fish product at any time.

*Catcher/processor vessel* means a vessel that can be used as a catcher vessel and can process or prepare fish to render it suitable for human consumption, industrial use, or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not include heading and gutting unless additional preparation is done.

*Directed fishing* means, with respect to moratorium groundfish species, directed fishing as defined at parts 672 and 675 of this chapter, or the catching and retaining of any moratorium crab species.

*Legal landing* means any amount of a moratorium species that was or is landed in compliance with Federal and state regulations in effect at the time of the landing.

*LOA* means length overall as defined at parts 672 and 675 of this chapter.

*Lost or destroyed vessel* means a vessel that has sunk at sea or has 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* with respect to a vessel means the greatest LOA of that vessel or its replacement that may qualify it to use a moratorium permit to catch and retain moratorium crab species or conduct directed fishing for moratorium groundfish species during the moratorium, except as provided at § 676.4(d). The maximum LOA of a vessel with moratorium qualification will be determined by the Regional Director as follows:

- (1) For a vessel with moratorium qualification that is less than 125 ft (38.1 m) LOA, the maximum LOA will be equal to 1.2 times the vessel's original qualifying length or 125 ft (38.1 m), which ever is less; and
- (2) For a vessel with moratorium qualification that is equal to or greater than 125 ft (38.1 m), the maximum LOA will be equal to the vessel's original qualifying length.

*Moratorium crab species* means species of king or Tanner crabs harvested in the Bering Sea and Aleutian Islands Area, the commercial fishing for which is governed by part 671 of this chapter.

*Moratorium groundfish species* means species of groundfish, except sablefish caught with fixed gear as defined at § 676.11, harvested in the Gulf of Alaska or harvested in the Bering Sea and Aleutian Islands management area, the commercial fishing for which is

governed by parts 672 and 675 of this chapter, respectively.

*Moratorium permit* means a transferrable permit or license that authorizes a vessel to fish for moratorium species in the Gulf of Alaska or the Bering Sea and Aleutian Islands management area.

*Moratorium qualification* means a transferrable prerequisite for a moratorium permit. A vessel may be considered to have "moratorium qualification" if it made a legal landing of a moratorium species during the qualifying period.

*Moratorium species* means any moratorium crab species or moratorium groundfish species.

*Original qualifying length* with respect to a vessel means the LOA of the vessel on or before June 24, 1992.

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

*Qualifying period* means the period of time from January 1, 1988, through February 9, 1992.

*Regional Director* means the Director, Alaska Region, NMFS, or an individual to whom the Regional Director has delegated authority.

#### § 676.3 Moratorium permit.

(a) *General.* The owner of a vessel of the United States must obtain a moratorium permit issued under this subpart before using the vessel to catch and retain any moratorium crab species or before using the vessel to conduct directed fishing for any moratorium groundfish species. A moratorium permit required by this section is in addition to any other permit or license required by Federal or state regulations.

(1) A moratorium permit issued under this part is valid only if:

(i) The permit is on board the vessel to which it is assigned at all times when the vessel is fishing for any moratorium species;

(ii) The permit has at least one endorsement authorizing the use of a specific type of fishing gear;

(iii) The vessel to which the permit is assigned has on board no fishing gear other than the type of gear authorized by permit endorsement;

(iv) The vessel to which the permit is assigned is fishing for a moratorium species during an open fishing season for that species in the fishing year for which the permit is issued; and

(v) The permit is not revoked, suspended, or modified under 15 CFR part 904 (Civil procedures).

(2) A moratorium permit must be presented for inspection on request of any authorized officer.

(b) *Exceptions.* A vessel within one of the following categories is not required to have on board a moratorium permit required under paragraph (a) of this section and may catch and retain moratorium species during the effective dates of the moratorium in compliance with the permit or license requirements of the State of Alaska with respect to moratorium crab species. Federal permit requirements at parts 672 and 675 of this chapter with respect to moratorium groundfish species, and other applicable Federal and state regulations:

(1) A vessel other than a catcher vessel or catcher/processor vessel;

(2) A catcher vessel or catcher/processor vessel that conducts directed fishing for groundfish in the Gulf of Alaska and does not exceed 26 ft (7.9 m) LOA;

(3) A catcher vessel or catcher/processor vessel that catches and retains moratorium crab species or that conducts directed fishing for moratorium groundfish species in the Bering Sea and Aleutian Islands area and does not exceed 32 ft (9.8 m) LOA;

(4) A catcher vessel or catcher/processor vessel that is catching IFQ halibut or IFQ sablefish or halibut or sablefish under the Western Alaska Community Development Quota Program in accordance with regulations at subparts B and C of this part and that is not directed fishing for any moratorium species; or

(5) A catcher vessel or catcher/processor vessel that, after November 18, 1992, is specifically constructed for and used in accordance with a Community Development Plan approved by the Secretary under § 675.27 of this chapter, is designed and equipped to meet specific needs that are described in the Community Development Plan, and does not exceed 125 ft (38.1 m) LOA.

(c) *Moratorium permit qualification.* Any vessel that was used to make a legal landing of any amount of any moratorium species during the qualifying period shall be a vessel with moratorium qualification and may be eligible to receive a moratorium permit, if:

(1) The vessel does not exceed its maximum LOA;

(2) The vessel is greater than 26 ft (7.9 m) LOA and is used to conduct directed fishing for moratorium groundfish species in the Gulf of Alaska;

(3) The vessel is greater than 32 ft (9.8 m) LOA and is used to conduct directed fishing for moratorium groundfish

species in the Bering Sea and Aleutian Islands management area; and

(4) The moratorium qualification for the vessel has not been transferred to another vessel.

(d) *Moratorium permit endorsements.* A moratorium permit is not valid unless the permit has at least one endorsement authorizing the use of a type of fishing gear specified in this paragraph.

Authorized fishing gear for the Bering Sea and Aleutian Islands crab fisheries is defined in the Alaska Administrative Code at title 5, chapters 34 and 35; authorized fishing gears for the Gulf of Alaska and the Bering Sea and Aleutian Islands groundfish fisheries are defined at part 672 of this chapter. Any one or a combination of the following fishing gear endorsements may be included in a moratorium vessel permit:

(1) Trawl, includes pelagic and nonpelagic trawl gears;

(2) Pot, includes longline pot and pot-and-line gears; and/or

(3) Hook, includes hook-and-line and jig gears.

(e) *Gear endorsement criteria.* A vessel with moratorium qualification shall be issued a moratorium permit with one or more gear endorsement(s) based on the gear endorsement criteria in this paragraph. For purposes of this paragraph, the qualifying period is "period 1," and the period of time from February 10, 1992, through December 11, 1994, is "period 2."

(1) *Crab/pot permit.* A vessel is eligible to receive a moratorium permit for the crab fisheries with a pot gear endorsement if the vessel:

(i) Made a legal landing of a moratorium crab species in period 1;

(ii) Made a legal landing of a moratorium groundfish species with any authorized fishing gear in period 1, and, in period 2, made a legal landing of a moratorium crab species; or

(iii) Made a legal landing of moratorium groundfish in period 1 with pot gear.

(2) *Groundfish/rawl permit.* A vessel is eligible to receive a moratorium permit for the groundfish fisheries with a trawl gear endorsement if the vessel:

(i) Made a legal landing of a moratorium groundfish species with any authorized fishing gear in period 1; or

(ii) Made a legal landing of a moratorium crab species in period 1, and, in period 2, made a legal landing of a moratorium groundfish species using trawl gear.

(3) *Groundfish/pot permit.* A vessel is eligible to receive a moratorium permit for the groundfish fisheries with a pot gear endorsement if the vessel:

(i) Made a legal landing of a moratorium groundfish species with any authorized fishing gear in period 1; or

(ii) Made a legal landing of a moratorium crab species in period 1.

(4) *Groundfish/hook permit.* A vessel is eligible to receive a moratorium permit for the groundfish fisheries with a hook gear endorsement if the vessel:

(i) Made a legal landing of a moratorium groundfish species with any authorized fishing gear in period 1; or

(ii) Made a legal landing of a moratorium crab species in period 1, and, in period 2, made a legal landing of a moratorium groundfish species using hook gear.

#### § 676.4 Transfer of moratorium permit.

(a) *General.* A transfer of a vessel's moratorium qualification or its moratorium permit is not valid unless it is approved by the Regional Director. Gear or species endorsement(s) are not severable from the permit in which the endorsement(s) is included. A moratorium permit transfer will not be approved without a coincident transfer of the moratorium qualification on which the permit is based. A transfer will not be approved by the Regional Director unless:

(1) A complete transfer application that satisfies all requirements specified at § 676.5 is submitted; and

(2) The vessel that would be receiving the transferred moratorium qualification or permit does not exceed the maximum LOA of the vessel relinquishing the moratorium qualification or permit.

(b) *Lost or destroyed vessel.* (1) The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, is null and void, unless the vessel is salvaged, and:

(i) The salvaged vessel does not exceed its maximum LOA;

(ii) Salvage of the vessel began on or before June 24, 1992; and

(iii) The salvaged vessel is used to make a legal landing of a moratorium species on or before [insert date 2 years after the effective date of this final rule.].

(2) The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, and subsequently salvaged, is valid and a moratorium permit may be issued to the owner of the salvaged vessel providing:

(i) The moratorium qualification of the salvaged vessel has not been transferred to a different vessel; and

(ii) The salvaged vessel does not exceed its maximum LOA.

(c) The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, may be transferred with approval of the

Regional Director under the following conditions:

(1) The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, but before the effective date of the moratorium may be transferred to another vessel providing that vessel:

(i) Does not exceed the maximum LOA of the vessel with moratorium qualification; and

(ii) Makes a legal landing of a moratorium species on or before [date 2 years after the effective date of this final rule].

(2) The moratorium qualification of any vessel that is lost or destroyed at any time after the effective date of the moratorium may be transferred to another vessel providing that vessel does not exceed the maximum LOA of the vessel with moratorium qualification.

(d) *Reconstruction.* The moratorium qualification or moratorium permit for a vessel is null and void if at any time after June 24, 1992, the LOA of the vessel is increased to exceed the vessel's maximum LOA. Any vessel that is reconstructed such that the LOA of the vessel exceeds its maximum LOA may retain its moratorium qualification or moratorium permit if:

(1) Reconstruction of the vessel began before June 24, 1992 and was completed after that date;

(2) The revised maximum LOA of the vessel is approved by the Regional Director as equal to the LOA of the reconstructed vessel; and

(3) A transfer of the vessel's moratorium qualification or moratorium permit to the reconstructed vessel is approved by the Regional Director pursuant to § 676.4.

#### § 676.5 Permit application procedure.

(a) *General.* An application for a moratorium vessel permit may be requested from the Restricted Access Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. Requests may be made by telephone by calling 907-586-7202 or 800-304-4846.

(b) *Application for permit.* With respect to any vessel, a moratorium permit will be issued to any person who is the owner of the vessel at the time of the permit application, and who has submitted, to the address in paragraph (a) of this section, a complete moratorium permit application that is subsequently approved by the Regional Director. A complete application for a moratorium vessel permit must include the following information for each vessel for which a permit is requested:

(1) Name of the vessel for which a permit is requested, state registration number of the vessel and, if documented, the U.S. Coast Guard documentation number of the vessel;

(2) Name(s), business address(es), and telephone and fax numbers of the person who is the owner of the vessel;

(3) Name(s), business address(es), and telephone and fax numbers of the person responsible for the operation of the vessel, if different from the owner;

(4) Valid documentation of the vessel's moratorium qualification if requested by the Regional Director due to an absence of landings records for the vessel during the qualifying period;

(5) Documentation of the vessel's original qualifying length if requested by the Regional Director or contested, such as a vessel survey, builder's plan, state or Federal registration certificate, fishing permit records, or other reliable and probative documents that clearly identify the vessel and are dated before June 24, 1992;

(6) Specification of the fishing gear(s) used during the moratorium qualifying period and (if necessary) the fishing gear(s) used during the period of time from February 10, 1992 through December 11, 1994;

(7) Specification of the vessel as either a catcher vessel or a catcher/processor vessel;

(8) If applicable, transfer authorization if a permit request is based on transfer of moratorium qualification pursuant to paragraph (c) of this section; and

(9) Signature of the person who is the owner of the vessel or the person who is responsible for representing the vessel owner.

(c) *Application for transfer.* An application for transfer of moratorium qualification or a moratorium permit must be completed by the applicant(s) and approved by the Regional Director before an application for a moratorium permit can be approved. An application for transfer and an application for a moratorium permit may be submitted simultaneously. A complete application for transfer must include the following information as applicable for each vessel from which moratorium qualification or a moratorium permit is requested to be transferred:

(1) Name(s), business address(es), and telephone and fax numbers of the applicant(s) including the owners of the moratorium qualification or moratorium permit that is to be transferred and the persons who would receive the transferred moratorium qualification or moratorium permit;

(2) Name of the vessel with moratorium qualification or moratorium

permit and the name of the vessel that would receive the moratorium qualification or moratorium permit (if any), the state registration number of each vessel and, if documented, the U.S. Coast Guard documentation number of each vessel;

(3) The original qualifying length of the vessel with moratorium qualification, its current LOA, and its maximum LOA;

(4) The LOA of the vessel that would receive the transferred moratorium qualification and documentation of that LOA by a current vessel survey or other reliable and probative document;

(5) A legible copy of a contract or agreement specifying the vessel or person from which moratorium qualification or moratorium permit is requested to be transferred, the date of the transfer agreement, and names and signatures of all current owners of the vessel with moratorium qualification, the moratorium qualification, or the moratorium permit, and the applicant;

(6) With regard to a vessel reconstruction:

(i) A legible copy of written contracts or written agreements with the firm that performed reconstruction of the vessel and that relate to that reconstruction;

(ii) An affidavit signed by the vessel owner(s) and the owner/manager of the firm that performed the vessel reconstruction specifying the beginning and ending dates of the reconstruction; and

(iii) An affidavit signed by the vessel owner(s) specifying the LOA of the reconstructed vessel;

(7) With regard to vessels lost or destroyed, a copy of U.S. Coast Guard Form 2692, Report of Marine Casualty; and

(8) Signatures of the persons from whom moratorium qualification or moratorium permit would be transferred or their representative and the persons who would receive the transferred moratorium qualification or moratorium permit or their representative.

(d) *Appeal.* (1) The Regional Director, or his or her appointee, will issue an initial administrative determination to each applicant who is denied a moratorium vessel permit by that official. An initial administrative determination may be appealed by the applicant in accordance with § 676.25. The initial administrative determination will be the final agency action for purposes of judicial review if a written appeal is not received by the Regional Director within the period specified at § 676.25(d).

(2) An initial administrative determination that denies an application for a moratorium vessel permit must authorize the affected vessel to catch and retain moratorium crab or moratorium groundfish species with the type of fishing gear specified on the application. The authorization expires on the effective date of the final agency action relating to the application.

#### § 676.6 Prohibitions.

In addition to the prohibitions specified in §§ 620.7, 672.7, 675.7, and 676.16 of this chapter, it is unlawful for any person to:

(a) Submit false or inaccurate information on a moratorium vessel permit application or application to transfer moratorium qualification or a moratorium vessel permit;

(b) Alter, erase, or mutilate any moratorium vessel permit;

(c) Catch and retain a moratorium species with a vessel that has a LOA greater than the maximum LOA for the vessel;

(d) Catch and retain a moratorium species with a vessel that has received an unauthorized transfer of moratorium qualification;

(e) Catch and retain moratorium crab species or conduct directed fishing for any moratorium groundfish species with a vessel that has not been issued a valid moratorium vessel permit, unless the vessel is lawfully conducting directed fishing for sablefish under subparts B and C of this part;

(f) Catch and retain moratorium crab species or conduct directed fishing for any moratorium groundfish species with a vessel that does not have a valid moratorium vessel permit on board, unless the vessel is lawfully conducting directed fishing for sablefish under subparts B and C of this part; and

(g) Violate any other provision of subpart A of this part.

#### §§ 676.7–676.9 [Reserved]

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