

procedures because it affects intermodal transportation and attracts substantial public interest. As such, the final rule was reviewed by the Office of Management and Budget and the Office of the Secretary of Transportation before being published. This present action only extends the effective date of the final rule and provides clarification of the rule. It is anticipated that the economic impact of this action will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this action on small entities. Based upon this evaluation, as well as for the reasons set forth in the previous paragraph, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this action directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements contained in the December 29, 1994, final rule have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and assigned the control number of 2125-0557 which expires on June 30, 1997. This action does not affect the recordkeeping requirements previously established.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not

have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Highways and roads, Intermodal transportation, Motor carriers, Recordkeeping requirements.

Authority: 49 U.S.C. 5901-5907, 31132, 31136, 31502 and 31504; 49 CFR 1.48.

Issued on August 3, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95-19719 Filed 8-9-95; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 671, 672, 675, 676, and 677

[Docket No. 950508130-5171-02; 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: Final rule.

SUMMARY: NMFS by this final rule imposes a temporary moratorium on the entry of new vessels into the groundfish fisheries under Federal jurisdiction in the Bering Sea and Aleutian Islands (BSAI) management area, the crab fisheries under Federal jurisdiction in the BSAI Area, and the groundfish fisheries under Federal jurisdiction in the Gulf of Alaska (GOA). This action curtails increases in fishing capacity and provides industry stability while the North Pacific Fishery Management Council (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).

EFFECTIVE DATES: Effective September 11, 1995 through December 31, 1998, except for the amendments to §§ 671.4, 672.4, and 675.4, and §§ 676.3 and 676.4, which will become effective on January 1, 1996, through December 31, 1998; and the amendments to Figure 1 to part 677, § 677.4, and §§ 671.2, and 671.3, which are effective September 11, 1995.

ADDRESSES: Copies of the Fishery Management Plan (FMP) amendments and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for the moratorium may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Send comments regarding the paperwork burden or any other aspect of the collection-of-information requirements contained in this rule, including suggestions for reducing the burden, to Ronald 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, and to the Office of Management and Budget (OMB), Paperwork Reduction Project (0648-0206), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

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

SUPPLEMENTARY INFORMATION:

Background

Domestic groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and the GOA are managed by NMFS under 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, respectively. 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 implements revisions of Amendment 23 to the BSAI groundfish FMP, Amendment 28 to the GOA groundfish FMP, and Amendment 4 to the BSAI crab FMP, which were approved by NMFS on June 29, 1995, under section 304(b)(3) of the Magnuson Act. These revised amendments address fishery management problems caused by excess harvesting capacity or overcapitalization by establishing temporary entry controls until more permanent controls on harvesting capacity can be implemented. The problems and issues these amendments address are discussed in the EA/RIR/FRFA and the notice of proposed rulemaking (60 FR 25677, May 12, 1995). A general description of the moratorium and these implementing regulations follows.

Vessel Moratorium

The moratorium limits access to the groundfish and BSAI Area crab resources off Alaska to vessels whose owners have been issued a moratorium permit for the vessel by NMFS or that are within a vessel category specified as exempt from the moratorium permit requirements in § 676.3(b). A moratorium permit is required in addition to any other permits required by Federal or State regulations. NMFS has revised its permit application and issuance process so that an integrated application may be used to apply for annual Federal groundfish permits and the Federal moratorium permit for groundfish and crab vessels. Part 677 is amended to remove and reserve Figure 1—the Fisheries Permit Application and Fisheries Processor Permit Application (Form FPP-1). That form will be revised for use as an integrated permit application.

1. Vessels Affected by the Moratorium

Any vessel that is not exempt and that catches and retains any species of king and Tanner crabs in a commercial fishery 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") is required to have on board a moratorium permit issued for that vessel. Any vessel that is not exempt and that conducts directed fishing for any groundfish species in a commercial fishery 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, except for sablefish caught with fixed gear ("moratorium groundfish species"), also is required to have on board a moratorium permit issued for that vessel.

Moratorium crab species and moratorium groundfish species are referred to collectively as "moratorium species." The term "directed fishing" is defined in the groundfish FMPs' implementing regulations at 50 CFR parts 672 and 675. Basically, this term refers to the criteria by which NMFS determines which species of groundfish a vessel has been targeting when any fish are on board the vessel. A vessel that retains only incidental catches of moratorium groundfish species in the EEZ is not required to have a moratorium permit; however, it is required to have a Federal fisheries permit. A vessel without a moratorium permit in the EEZ is required to discard any catch of a moratorium groundfish species that exceeds the maximum retainable bycatch amount specified in parts 672 and 675. Crab species 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 categories of vessels from the moratorium permit requirement. The rationale for the exemptions was provided in the notice of proposed rulemaking for the initially proposed moratorium (59 FR 28827, June 3, 1994). Vessels within the following categories are not required to have moratorium permits, however, other Federal and State of Alaska permit requirements continue to apply:

- Vessels that are not used to catch fish (e.g., processor vessels, tenders, or support vessels);
- Vessels that do not catch and retain moratorium crab species or that do not conduct directed fishing for moratorium groundfish species;
- Vessels that catch and retain moratorium crab species or that conduct directed fishing for moratorium groundfish species only within State of Alaska waters;
- Vessels that conduct directed fishing for moratorium groundfish species in the GOA and that are no greater than 26 ft (7.9 m) in length overall (LOA);
- Vessels that catch and retain moratorium crab species in the BSAI Area or that conduct directed fishing for moratorium groundfish species in the BSAI management area and that are no greater than 32 ft (9.8 m) LOA;
- Vessels that are fishing for IFQ halibut, IFQ sablefish, or halibut or

sablefish under the Western Alaska Community Development Quota (CDQ) program; or

- Vessels that, after the implementation of the CDQ program for pollock on November 18, 1992 (57 FR 54937, November 23, 1992), are specifically constructed and used in accordance with a Community Development Plan (CDP), are specially designed and equipped to meet specific needs that are described in the CDP, and are no greater than 125 ft (38.1 m) LOA. A vessel operating under the CDQ exemption also may be used to harvest non-CDQ species, but the exemption does not apply to a vessel if the vessel is transferred to an entity that does not have a CDP.

2. Moratorium Qualification

Generally, a vessel is qualified for 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. Exceptions to this general rule are described below.

A "legal landing" is defined as any amount of a moratorium species that was landed in compliance with Federal and state commercial fishing regulations in effect at the time of the landing. This definition is intended to limit landing claims to those that can be verified through required Federal and state catch or landing reports. A vessel owner who alleges that government records are in error must produce a copy of a valid state fish ticket or other report required at the time of landing as evidence that the vessel made a legal landing of a moratorium species from January 1, 1988, through February 9, 1992.

If the owner presents acceptable evidence of a legal landing of a moratorium species that the vessel made from January 1, 1988, through February 9, 1992, the vessel is qualified for a moratorium permit, unless that vessel is exempt from the moratorium permit requirements as described above. For example, a vessel that is less than or equal to 26 ft (7.9 m) LOA and that conducts directed fishing for groundfish in the GOA is exempt from the moratorium permit requirements. It is not qualified for a moratorium permit even if it made a legal landing of moratorium species from January 1, 1988, through February 9, 1992. Likewise, a vessel that made legal landings only of halibut and/or sablefish caught with fixed gear from January 1, 1988, through February 9, 1992, is not qualified for a moratorium permit since halibut is not a groundfish species and sablefish caught with fixed gear is not a moratorium groundfish species.

A moratorium permit will be issued to the owner of a qualified vessel after submission and approval of a completed application for a moratorium permit for that vessel. Moratorium qualification is a prerequisite for issuance of a moratorium permit. Moratorium qualification stays with the vessel, unless it is transferred by the vessel's owner (see transferability discussion below). NMFS will maintain a database of vessels that have moratorium qualification according to Federal or state catch or landings reports. Generally, a moratorium permit will be valid through December 31, 1998, unless the moratorium qualification on which it is based is transferred, or until the permit is revoked or suspended under 15 CFR part 904 (Civil Procedures). A moratorium permit based on the moratorium qualification of a vessel that was lost or destroyed before January 1, 1996, will be valid only through December 31, 1997, but may be renewed if the vessel makes a legal landing of a moratorium species in 1996 or 1997 (see transferability discussion below).

If a vessel has moratorium qualification, a moratorium permit will be issued for it provided it is not an exempt vessel, and provided the vessel's LOA does not exceed its "maximum LOA." A vessel's maximum LOA is the greatest LOA that the vessel, or its replacement, may have and remain qualified for a moratorium permit. A vessel's maximum LOA is based on the LOA of the original qualifying vessel on June 24, 1992. If the original qualifying LOA of a vessel is equal to or greater than 125 ft (38.1 m), the maximum LOA is the original qualifying LOA. If the original qualifying LOA of a vessel is less than 125 ft (38.1 m) LOA, the maximum LOA is 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less. This limited length increase allowance, known as the "20 percent rule," is intended to allow an owner of a small vessel to improve the vessel's stability by widening and lengthening its hull. Although increasing a small vessel's length under the 20 percent rule could improve the vessel's safety, it also could increase the vessel's fishing capacity. The Council recognized this possibility and allowed vessel length increases only for vessels less than 125 ft (38.1 m) LOA. The Council made this decision on June 24, 1992, to discourage owners of large vessels from increasing their vessels' length substantially between that date and the implementation date of the moratorium.

Vessels under reconstruction on June 24, 1992, are a special case, and the

maximum LOA of such vessel is the vessel's LOA on the date reconstruction is completed. This special case is discussed in more detail below. Any vessel that exceeds its maximum LOA is not eligible for a moratorium permit and any moratorium permit already issued will be invalidated.

NMFS will use the existing definition of LOA in 50 CFR parts 672 and 675 for purposes of implementing the maximum LOA limitation. This definition refers to the length of a vessel "rounded to the nearest foot." NMFS will use standard arithmetic rounding in determining the LOA of a vessel for purposes of the moratorium. For example, a vessel that is 124 feet 7 inches in length would have an LOA of 125 feet (38.1 m), a vessel that is 125 feet 5 inches in length would have an LOA of 125 feet (38.1 m), and a vessel that is 125 feet 6 inches in length would have an LOA of 126 feet (38.4 m).

3. Crossovers

The Council's original moratorium proposal (59 FR 28827, June 3, 1994) would have allowed a vessel that qualified for a moratorium permit because of a legal landing, for example, of a moratorium crab species during the qualifying period, to cross over to moratorium groundfish species fisheries even if it had no previous landing history in a groundfish fishery. However, the Council decided at its meeting in December 1994 to propose limiting crossovers. Under the revised proposal, which this final rule adopts, a vessel that made a legal landing from January 1, 1988, through February 9, 1992, in either a groundfish or crab fishery, but not both, can cross over as a new vessel in the fishery in which it did not make a legal landing in the qualifying period provided:

1. It uses in the new fishery only the same fishing gear type that it used to qualify for the moratorium in the other fishery; or
2. It made a legal landing in the crossover fishery during the period February 10, 1992, through December 11, 1994, and it uses only the same fishing gear type that it used during that period.

Example 1. A vessel that made a legal landing in the BSAI Area crab fisheries from January 1, 1988, through February 9, 1992, would be eligible for a moratorium permit to operate in that fishery and in the BSAI management area or GOA groundfish fisheries using pot gear where that gear is authorized. The only legal fishing gear in the BSAI Area crab fisheries is pot gear. Therefore, if the vessel crosses over into

the groundfish fisheries it is limited to using pot gear.

Example 2. A vessel that made a legal landing in the BSAI management area or GOA groundfish fisheries from January 1, 1988, through February 9, 1992, is 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 Area crab fishery from February 10, 1992, through December 11, 1994. Therefore, this vessel also is eligible for a moratorium permit to operate in the BSAI Area crab fishery, and it may move between fisheries using any authorized gear.

Example 3. A vessel that made a legal landing in the BSAI Area crab fisheries from January 1, 1988, through February 9, 1992, is eligible for a moratorium permit to operate in that fishery and in the BSAI management area 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 from February 10, 1992, through December 11, 1994. Therefore, this vessel is eligible for a moratorium permit to operate in the groundfish fisheries using pot gear and hook-and-line gear. However, unless the vessel made a legal landing in the groundfish fisheries using trawl gear during the period February 10, 1992, through December 11, 1994, it is not eligible to cross over into the groundfish fishery using trawl gear.

This crossover gear restriction recognizes the similarity of fishing gear used in the BSAI Area crab fisheries and some groundfish fisheries. It also recognizes that some vessels qualified in one moratorium fishery and crossed over to a new moratorium fishery after the cutoff date of February 9, 1992, based on the Council's original moratorium proposal. These vessels are allowed to continue to operate in the crossover fisheries under the moratorium, but are restricted to using the fishing gear they used in the crossover fisheries from February 10, 1992, through December 11, 1994, the date of the Council's decision to revise its original moratorium proposal.

This revision to the original proposed moratorium requires the issuance of moratorium permits with fishery-specific fishing gear type endorsements. Four fishery-specific/gear type endorsements are set forth in § 676.3(d) to cover the categories of fishing gear authorized in the Federal regulations (with respect to groundfish) and in the State of Alaska regulations (with respect to crab). These are:

1. Groundfish fisheries/trawl gear, which includes groundfish pelagic and nonpelagic trawl gears as defined at 50 CFR part 672;

2. Crab fisheries/pot gear, which includes crab pot gear as defined in the Alaska Administrative Code at title 5, chapters 34 and 35;

3. Groundfish fisheries/pot gear, which includes groundfish longline pot and pot-and-line gears as defined at 50 CFR part 672; and

4. Groundfish fisheries/hook gear, which includes groundfish hook-and-line and jig gears as defined at 50 CFR part 672.

The Director, Alaska Region, NMFS (Regional Director), will determine the appropriate fishery-specific/gear type endorsement(s) for a moratorium permit based on the permit application received, existing landings records, and the vessel's LOA. The moratorium permit will be endorsed with one or more of the fishery-specific/gear type endorsements listed above. For example, the owner of a vessel that made a legal landing of BSAI Area crabs during January 1, 1988, through February 9, 1992, will be issued a moratorium permit for the vessel endorsed to fish for groundfish and BSAI Area crab with pot gear. The owner of a vessel that made a legal landing from January 1, 1988, through February 9, 1992, of groundfish using trawl and/or hook gear but not pot gear during the qualifying period will be issued a moratorium permit for the vessel endorsed to fish for groundfish with pot, hook, and trawl gear, but the permit will not be endorsed to allow the vessel to fish for BSAI Area crabs unless it also had made a legal landing in the BSAI Area crab fishery during the period February 10, 1992, through December 11, 1994.

4. Transferability

A moratorium qualification is transferable under certain conditions. A moratorium qualification transfer must be approved by the Regional Director before a moratorium permit may be issued based on that qualification. If a vessel owner transfers the moratorium qualification of his vessel, then that vessel is no longer qualified for a moratorium permit to participate in any moratorium fishery after the effective date of the transfer. If the vessel had been issued a moratorium permit, then that permit will become invalid on the effective date of the transfer. A new moratorium permit will be issued for the vessel that the moratorium qualification was transferred to, once the transfer is approved and a permit application is submitted.

The purpose of providing for transfers of moratorium qualification is to allow a vessel owner to make limited improvements to or replace an existing vessel in the moratorium fisheries. Restrictions on transfers are necessary to limit the potential fishing capacity resulting from vessel improvements or replacements. The Regional Director will not approve a transfer of moratorium qualification to a vessel with an LOA exceeding the maximum LOA of the originally qualified vessel, and a moratorium permit will not be issued for the vessel. A moratorium permit becomes invalid if the LOA of the vessel for which it has been issued is increased to exceed the maximum LOA associated with the moratorium qualification.

Moratorium qualification is presumed to belong to the current owner of the vessel that made a legal landing of moratorium species from January 1, 1988, through February 9, 1992, unless otherwise specified in a purchase agreement or contract. 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 may be retained by the vessel's owner for liquidation independently of the vessel. A vessel owner also may choose to retain the moratorium qualification of the vessel when it is sold, lost, or destroyed, so that he/she can obtain a moratorium permit for a replacement vessel. Regardless of the reason for transferring a moratorium qualification, valid documentation of the transfer is required before the transfer will be approved and a moratorium permit issued based on that moratorium qualification.

Fishery-specific/gear type endorsements cannot be separated and transferred independently of the endorsed permit. 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 cannot be transferred separately from the permit. For another example, the hook endorsement on a groundfish/trawl, pot, and hook permit would not be transferrable.

A cutoff date of January 1, 1989, determines whether a qualified vessel that was lost or destroyed can transfer its moratorium qualification to a replacement vessel. The Council reasoned that a vessel owner who lost a vessel before January 1, 1989, would have replaced or salvaged the vessel before the end of the qualifying period

if the owner intended to continue participation in the moratorium fisheries.

Salvage of lost or destroyed vessels: The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, is not valid for purposes of issuing a moratorium permit for that vessel unless salvage of that vessel started before June 24, 1992, and the salvaged vessel's LOA does not exceed its maximum LOA. The salvaged vessel must make a legal landing of a moratorium species within the period January 1, 1996–December 31, 1997, to maintain its qualification for a moratorium permit in 1998.

The moratorium qualification of a vessel lost or destroyed on or after January 1, 1989 is valid for purposes of issuing a moratorium permit for that vessel regardless of when salvage began provided that the vessel has not already been replaced and the LOA of the salvaged vessel does not exceed its maximum LOA.

Replacement of lost or destroyed vessels: The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, cannot be transferred to another vessel. The moratorium qualification of a vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, can be transferred to a replacement vessel provided the LOA of the replacement vessel does not exceed the maximum LOA of the vessel that was lost or destroyed. The vessel that was lost or destroyed will no longer be a moratorium qualified vessel. The moratorium permit of the replacement vessel will expire on December 31, 1997, unless the vessel makes a legal landing of a moratorium species on or before that date.

The moratorium qualification of a vessel that is lost or destroyed on or after January 1, 1996, may be transferred to a replacement vessel provided the LOA of the replacement vessel does not exceed the maximum LOA of the vessel that was lost or destroyed. The vessel that was lost or destroyed would no longer be a moratorium qualified vessel. In the case of multiple or sequential replacements or reconstructions of a moratorium qualified vessel, the LOA may not be increased beyond the maximum LOA of the original qualifying vessel.

Reconstruction: Vessel reconstruction is defined as a change in the LOA of the vessel from its original qualifying LOA. The moratorium qualification of a vessel is not valid for purposes of issuing a permit for that vessel if at any time on or after June 24, 1992, the LOA of the vessel is increased to exceed its

maximum LOA. If reconstruction was completed prior to June 24, 1992, and the reconstructed vessel is less than 125 feet (38.1) LOA, further increases in LOA are allowed between June 24, 1992, and the end of the moratorium subject to the 20 percent rule discussed above under "Moratorium Qualification." If reconstruction was completed prior to June 24, 1992, and the reconstructed vessel is equal to or greater than 125 feet (38.1 m) LOA, the LOA of the reconstructed vessel is the maximum LOA. If reconstruction of a vessel began before June 24, 1992, and was completed after that date, the maximum LOA is the LOA of the reconstructed vessel on the date reconstruction was completed. This is the maximum LOA even if the LOA of the reconstructed vessel is less than 125 ft (38.1 m). The purpose of this exception to the 20 percent rule for vessels less than 125 ft (38.1 m) LOA is to prevent the disqualification of a vessel that was undergoing reconstruction on the date that the Council initially recommended its original moratorium proposal. The Council decided that such a vessel should be allowed to participate in the moratorium fisheries, but that it should not be allowed any additional length increases under the 20 percent rule.

Vessel reconstruction begins and ends with the start and completion of the physical modification of the vessel. For a vessel undergoing reconstruction on June 24, 1992, any increase in the LOA of the vessel resulting from that reconstruction must be documented. Acceptable documentation of the beginning and ending dates of reconstruction is 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. If acceptable, the Regional Director will certify the new LOA as the maximum LOA for that vessel.

5. Administration

The final rule implements the moratorium by limiting the issuance of moratorium permits to moratorium-qualified vessels or their replacements. The Restricted Access Management Division, Alaska Region, NMFS, will administer the moratorium by maintaining a database of moratorium qualifications, receiving and reviewing permit and transfer applications, making initial determinations of eligibility, and issuing moratorium permits. This Division also will issue or renew a Federal fisheries permit to or for each vessel qualified for a moratorium permit and to each vessel for which a moratorium permit is not

required 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).

Most moratorium permits will be valid until the moratorium expires on December 31, 1998. For some salvaged vessels and some vessels that replace qualified vessels that are lost or destroyed, however, moratorium permits will expire after the first 2 years of the moratorium (i.e., on January 1, 1998). However, those moratorium permits can be renewed if the vessel makes a legal landing of a moratorium species in 1996 or 1997. The multi-year duration of a moratorium permit differs from that of a Federal fisheries permit, which is valid only for the year in which it is issued.

An application for a moratorium permit may be submitted at any time. Application forms for Federal Fisheries Permits, Federal Processor Permits, and Vessel Moratorium Permits will be integrated into a single application form. Submission of only one completed form is required for application for all three types of permits. A moratorium permit application for a vessel will be approved if the vessel's owner has a moratorium qualification and the vessel's LOA is less than or equal to the maximum LOA. If a moratorium permit is requested for a vessel that is not in the NMFS moratorium qualification database, then the applicant will be requested to provide evidence of the vessel's qualification either by demonstrating a legal landing of a moratorium species from January 1, 1998, through February 9, 1992, or a transfer of moratorium qualification. As stated above, moratorium qualification is presumed to remain with the current owner of a vessel that made a legal landing of any moratorium species from January 1, 1988, through February 9, 1992. Otherwise, a valid contract or agreement to transfer a vessel's moratorium qualification or retain it when the vessel is transferred is required to demonstrate ownership of the moratorium qualification. Determination of a vessel's maximum LOA is based on Federal or state permits or registration documents that demonstrate the original qualifying LOA of the vessel. If these documents are not available, NMFS may request the vessel owner to produce a marine survey, builder's plans, or other third-party documentation of the vessel's LOA on June 24, 1992.

An application for approval of transfer of moratorium qualification may be submitted at any time. Approval of a transfer requires the submission of

a transfer agreement signed by the original owner(s) and receiver(s) of the moratorium qualification, and the submission of proof that the vessel to which the moratorium qualification would be applied for purposes of qualifying for a moratorium permit is less than or equal to the maximum LOA of the original qualifying vessel.

An initial administrative determination to deny the issuance of a moratorium permit will be explained in writing to the permit applicant, and the denial may be appealed following the procedures set forth at 50 CFR 676.25. A written appeal must 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 will 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 will 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, occurs 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 approval of a transfer of moratorium qualification. The maximum LOA restrictions would be too easily circumvented and the purpose of the moratorium undermined if appeals of denials of approvals of transfer were allowed. An administrative determination to deny approval of a transfer of a moratorium qualification and the issuance of a permit based on that moratorium qualification will be the final agency action for purposes of judicial review.

Changes From the Proposed Rule

The vessel moratorium implemented by this rule is described in the notice of proposed rulemaking published on May 12, 1995. The principal parts of the vessel moratorium remain as discussed in that notice. NMFS made changes regarding applications for fisheries permits and the duration of moratorium permits. NMFS also made editorial and formatting changes for clarity.

1. An application for a Federal Fisheries Permit must be submitted annually. This application provides NMFS with specific information regarding the vessel, fisheries, vessel operations, and owner. This information is necessary to maintain accurate and up-to-date records of the currently active vessels in the groundfish fisheries

and is necessary for management of the fishery. One application form is used to apply for both the Federal Fisheries Permit and the Federal Moratorium Permit and only one form needs to be submitted to apply for both in 1996.

2. Moratorium permits were proposed to be valid only for the calendar year for which they were issued, which would have required an annual renewal to confirm the validity of the vessel's qualification. Under the final rule, a moratorium permit, once issued, will remain valid for most vessels through December 31, 1998 (for some vessels through December 31, 1997, with renewal allowed for 1998 if the vessel makes a legal landing of a moratorium species in 1996 or 1997), or until the moratorium qualification on which the permit is based is transferred. The owners of most vessels with a moratorium permit are not required to provide information regarding moratorium qualification again during the temporary moratorium period.

Response to Comments

Twelve letters of comment were received on the proposed rule before the end of the comment period. The following paragraphs summarize and respond to those comments.

Comment 1: The proposed cutoff date for determining the replacement of a moratorium-qualified vessel that was lost or destroyed should be concurrent with the beginning of the qualifying period. As proposed, the qualifying period begins January 1, 1988, but a qualified vessel lost before January 1, 1989, loses its moratorium qualification and a transfer of it would not be possible. The proposed date of January 1, 1989, appears arbitrary and capricious because it is inconsistent with the qualifying period dates. If the date of January 1, 1989, is adopted for determining the replacement of lost or destroyed vessels, then an exception should be made in cases where the purchase of the fishing rights of a sunken vessel were made before the Council took its action to establish that date.

Response: The cutoff date of January 1, 1989, for replacing or salvaging a lost or destroyed vessel has a rational basis and is not arbitrary and capricious. In recommending this date, the Council reasoned that the owner of a vessel lost or destroyed before 1989 likely would have received insurance claims and replaced the vessel or begun salvage operations within the remaining qualifying period. If this had not happened, then the vessel owner probably did not intend to continue participation in the moratorium fisheries as a vessel owner. This

measure provides a means of reducing the size of the qualifying fleet by excluding lost or destroyed vessels that were not replaced or salvaged within a reasonable period of time before the end of the qualifying period on February 9, 1992. The Council recommended this date in its initial moratorium proposal (June 3, 1994, 59 FR 28827) in which the qualifying period was January 1, 1980, through February 9, 1992. The Council's revised amendment proposal changed the qualifying period to January 1, 1988, through February 9, 1992. Although the beginning of the revised qualifying period and the vessel replacement cutoff date are only 1 year apart, the rationale for the cutoff date remains appropriate and reasonable. The purchase of moratorium qualification before the Council acted in June 1992, to propose a moratorium was highly speculative. No one knew at that time what the conditions and criteria for qualification would be or whether NMFS would approve the moratorium proposal. Limiting speculative investment in fishing capacity is an objective of the moratorium. An exception to the vessel replacement cutoff date would reward such speculation.

Comment 2: Any sunken vessel that has not been replaced within 3 to 4 years of its sinking should be disqualified from transferring its moratorium qualification. Further, any vessel owner who constructs a new vessel after having one sink should have the new vessel counted as the replacement vessel to prevent him from qualifying the new vessel and selling the fishing rights of the sunk vessel separately which would bring in two new vessels.

Response: Limiting the replacement of lost or destroyed vessels during the moratorium is reasonable; however, the moratorium is scheduled to expire in 3 years. If the Council were to determine that the moratorium should be extended, then such a measure could be included in a moratorium renewal proposal. The Council used this rationale, however, for vessels lost or destroyed during the qualifying period. The Council proposed a cutoff date, January 1, 1989, which is about 3 years before the end of the qualifying period. A qualified vessel lost or destroyed before the cutoff date, but not replaced during the qualifying period, would be disqualified from receiving a moratorium permit unless salvage operations had started before June 24, 1992. The moratorium rules provide for replacing vessels lost or destroyed on or after January 1, 1989, by transferring moratorium qualification from the lost

vessel to a replacement vessel. No provision is made for replacing a lost or destroyed vessel with two vessels.

Comment 3: There was no definition of "length overall" in the proposed rule. The rule should clarify how NMFS intends to ascertain a vessel's current LOA.

Response: The proposed rule, at § 676.2, defined LOA as this term is defined at §§ 672.2 and 675.2. NMFS will determine maximum LOA by relying on Federal and state fishing permit data currently on file that indicate the original qualifying LOA of a vessel on June 24, 1992. Other documentation of a vessel's LOA may be requested by NMFS, especially if the maximum LOA is contested or in transfers of moratorium qualification. Such documentation may include a vessel survey, builder's plan, state or Federal registration certificate, or other reliable and probative documents. Fishing for moratorium species with a vessel that has an LOA in excess of the maximum LOA provided by the moratorium permit for that vessel is prohibited and would be a violation of the permit. Investigation of such activity will be an enforcement function.

Comment 4: If the moratorium qualification of a vessel is purchased before the effective date of the moratorium, then getting the signature of the original owner of the moratorium qualification on the transfer application should be unnecessary providing a copy of the purchase contract or bill of sale is attached to the transfer application as required.

Response: The regulations implementing the moratorium qualification transfer procedure at § 676.5(c) require, in part, a legible copy of a contract or agreement to transfer moratorium qualification signed by the affected persons and signatures of the same persons on a transfer application form. NMFS agrees that obtaining the signature of a former owner of moratorium qualification on a transfer application may be difficult if the applicant has lost contact with the former owner. In such instances, NMFS may waive the required signature of the former owner of the moratorium qualification on the transfer application if the signature(s) on the transfer contract or agreement are determined by NMFS to demonstrate sufficiently the former owner's intent to relinquish his/her interest in the moratorium qualification to the transfer applicant. A decision to waive any signature requirement on a transfer application will be made on a case-by-case basis. Section 676.5(c)(8) has been changed to provide for this discretion.

Comment 5: The revised qualification period is a marked improvement over the originally proposed qualification period because it would remove a significant number of vessels from moratorium qualification. The proposed moratorium would allow the Council and NMFS to bypass consideration of another interim license limitation system and to move directly toward an individual transferrable quota program.

Response: The Council must make the initial determination on the preferred limited access policy to follow the moratorium, if any. NMFS will review that policy recommendation, when it is submitted, for consistency with the Magnuson Act and other applicable laws.

Comment 6: The crossover provisions are too liberal. Crossover privileges would be accorded to three categories of vessels. There is no basis for permitting crossovers for the category which consists of vessels that qualified in only one fishery during the qualifying period and that any time after February 9, 1992, cross over to the other fishery using the same type of gear. This crossover provision is inconsistent with national standards 1, 4, 5, and 6, section 303(b)(6) of the Magnuson Act, and the purposes of the moratorium because it would allow hundreds of vessels to enter the groundfish fishery that did not operate in that fishery during the qualifying period or the recent past. This will contribute to overcapitalization in the groundfish fishery.

Response: The limited crossover provision on the revised moratorium proposal is far less liberal than that originally proposed. Although a vessel would be allowed to operate in certain crab or groundfish fisheries in which it had no prior fishing history, the flexibility afforded this vessel to move between fisheries is limited to using the same gear type in both fisheries. The number of vessels able to take advantage of this provision is not likely to overcapitalize seriously either fishery, relative to current capital in each fishery, during the effective period of the moratorium. Although this provision may advantage one group to the detriment of another, it is consistent with the Magnuson Act because it supports the objectives of the moratorium and the respective FMPs to allow fishermen flexibility while not significantly undermining the intent of the moratorium to control temporarily the growth of fishing effort in the affected fisheries.

Comment 7: The proposed rule does not distinguish between permits that would allow the landing of incidental

catches of moratorium species while directed fishing for a non-moratorium species and permits that would allow directed fishing for a moratorium species by exempt vessels. Retention of a bycatch amount of a moratorium species while directed fishing for a non-moratorium species should be allowed to reduce discards of moratorium species.

Response: A Federal fishing permit currently is required to catch and retain any groundfish species and a State of Alaska fishing permit is required to catch and retain crab species regardless of whether the species was taken incidental to a targeted harvest of species other than groundfish or crab. These basic licensing requirements will continue under the moratorium. For example, a salmon troller who intends to retain his bycatch of a moratorium groundfish such as rockfish, would be required to have a Federal fisheries permit. Hence, bycatch amounts of a moratorium species will be retainable. The proposed rule provided for this by requiring (for groundfish) either a Federal fisheries permit or a moratorium permit. As changed in the final rule, both permits are required for vessels targeting moratorium species, but only the Federal fisheries permit is required of exempt vessels. The effect is the same, however.

Comment 8: The proposed moratorium is necessary as an interim measure to limit fishing capacity pending the establishment of an individual transferrable quota system that will lead to a much-needed reduction in fishing capacity and an end to the dangerous and destructive race for fish prevailing in the current open access system.

Response: Comment noted. At its meeting in June 1995, the Council approved license limitation as the recommended limited access system to follow the moratorium. NMFS will review that recommendation for consistency with the Magnuson Act and other applicable laws, and provide opportunity for public comment.

Comment 9: The proposed moratorium cuts out vessels that have a substantial history of participation in the crab fishery while allowing entry into that fishery, and the fixed-gear fishery for cod, a large number of vessels with no history of participation. The moratorium was designed to prevent new entrants, and not cut out past participants, while the Council developed a long-range plan. Instead, it has cut out vessels that relied on previously published control date notices. The revised moratorium ignores the primary concern of NMFS in

disapproving the original proposal in that the proposed crossover provisions would allow a vessel with no prior history in a moratorium fishery to enter that fishery based on participation in a different moratorium fishery. The crossover provision would incorrectly treat a vessel entering a fishery in which it has never operated on par with a vessel resuming operations in or re-entering the same fishery. The crossover provision would unfairly expand the fishing privileges of one class of vessel while restricting opportunity for another. This ignores the "fair and equitable" requirement of national standard 4. Further, it ignores present participation, historical fishing practices, and the economics of the fishery in violation of section 303(b)(6) of the Magnuson Act. The analysis of the proposed moratorium ignored the fact that vessels that pioneered the Bering Sea crab fishery have exited that fishery because many crab stocks have been depressed since the 1980's.

Response: The moratorium was designed to prevent new entrants into the affected fisheries, but it also was designed to prevent the re-entry of historical vessels that had not participated in one of these fisheries within a reasonable period of time. The Council and NMFS determined that participation during the period January 1, 1988, through February 9, 1992, was a reasonable period of time for a vessel to qualify given the objective of the moratorium. Providing for historical vessels through a qualifying period that begins on January 1, 1980, as originally proposed, would have defeated the objective of the moratorium by qualifying a fleet substantially larger than that operating in any one year. This was one reason for NMFS' disapproving the original moratorium proposal. As approved, the moratorium implementing regulations would allow a vessel that "pioneered" the BSAI Area crab fishery in the early 1980's to re-enter that fishery if the vessel had made a legal landing in any groundfish fishery during the qualifying period with pot gear. The vessel also could re-enter the BSAI Area crab fishery if it had made a legal landing in any groundfish fishery during the qualifying period and also made a legal landing in the BSAI Area crab fishery during the period February 10, 1992, through December 11, 1994. If this vessel made no legal landings of BSAI Area crab during the period January 1, 1988 through December 11, 1994, however, then it is arguably no longer dependent on that fishery despite its early history. The allowance of certain vessels with no history in the

BSAI Area crab fishery to enter that fishery for the first time under the moratorium provides limited flexibility for vessels to move between the groundfish and BSAI Area crab fisheries. This flexibility is limited to vessels using the same type of gear in both fisheries (e.g., pot gear). This limited crossover provision is fair and equitable. Even though it provides advantages to one group to the detriment of another, it is justified in terms of the objective of the moratorium and the respective FMPs. The analysis of the proposed moratorium includes numbers of vessels that would be affected by moratorium alternatives with different qualifying periods.

Comment 10: The Alaska Board of Fisheries adopted its crab pot limitation to be consistent with the vessel lengths described in the moratorium proposed by the Council. Some vessel owners may increase the length of their vessels to carry more pots while maintaining the moratorium qualification of their vessels. The moratorium rule should address this issue and clearly state that such lengthening would not be allowed under the moratorium.

Response: The moratorium rule relies on the existing LOA definition in 50 CFR parts 672 and 675. That definition states that the LOA of a vessel means "the horizontal distance, rounded to the nearest foot, 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." If the LOA of a vessel exceeds its maximum LOA, then that vessel would be denied a moratorium permit, or if a moratorium permit were issued before the vessel length was increased to exceed its maximum LOA, then the permit would be invalidated. The moratorium regulations do not prohibit a vessel from changing its LOA from its original qualifying LOA, however, a vessel must be equal to or less than its maximum LOA to be issued or hold a valid moratorium permit.

Comment 11: There was a lack of public review and timely analysis associated with the Council's adoption of the moratorium. The time allowed for public comment on the proposed rule was too restrictive and unnecessarily abbreviated. Twenty days for public comment on an issue as significant to the fishery as is the moratorium is unreasonable, especially when the individual listed in the proposed rule notice as the contact for further information was absent from his NMFS office for all but 3 days of the 20-day public comment period. The convenience of the public seems to have

been ignored. One letter requested additional time in which to comment.

Response: NMFS determined that a 20-day public comment period on the proposed rule was sufficient. The moratorium proposal was a revision of a previously published proposal (59 FR 28827, June 3, 1994) on which there was a 45-day comment period. Further, the moratorium proposal has been an issue of public interest and expression ever since the Council took its initial action on it in June 1992. Ample time has been provided for public comment on this issue to the Council and to NMFS. NMFS temporarily assigned another individual, who also was familiar with the moratorium proposed rule, to serve in the absence of the individual listed as the contact for further information. Public queries about the proposed rule to the contact phone number and address during the comment period were addressed.

Comment 12: Financial arrangements should not be disrupted by allowing moratorium qualifications to be transferred without regard to the legitimate interests of those who rely on the value of the vessel, together with its right to fish, in extending credit to the vessel owner. The mandatory requirements for an application for transfer in proposed § 676.5(c) should be amended to include consent of mortgagees of record. There is precedent in maritime law for requiring mortgagee consent before action is taken that could jeopardize the mortgagee's interest in a vessel. The addition of such a requirement could be easily administered by relying on U.S. Coast Guard records and requiring an applicant to provide a Coast Guard certificate of ownership and consent of any mortgagees of record with a transfer application.

Response: The mortgagee's interest in a vessel could be protected by including, in the mortgage agreement or contract, a requirement that the vessel owner secure the approval of the mortgagee before transferring ownership of the vessel or its moratorium qualification to another person. The regulatory burden of complying with the moratorium qualification transfer requirements will be lessened to the extent that the mortgagee's interest in the vessel can be protected without government intervention through a private agreement.

Comment 13: The proposed qualifying period neither provides for a fair and equitable allocation of fishing privileges, nor reasonably considers present participation. The qualifying period is based predominantly on economic and social factors that existed

before June 1992 and ignores current economic conditions. Investments and participation that occurred in the groundfish and crab fisheries in the past 3 years were legal and reasonable, but are ignored by the qualifying period. The qualifying period should be modified to allow for present participants to be included under the moratorium.

Response: The Council and NMFS have taken present participation into account in establishing the qualifying period. The initially proposed qualifying period, January 1, 1980, through February 9, 1992, would have allowed an excessive number of vessels to qualify. After disapproval of the original moratorium proposal, the Council revised the qualifying period to January 1, 1988, through February 9, 1992. This change gave more weight to the vessels participating in the latter part of the original qualifying period. At its meeting in September 1994, the Council considered but chose not to extend the qualifying period through 1993. The Council made clear that it wanted to maintain its cutoff date of February 9, 1992, and did not want to reward persons who entered new vessels into the fisheries after that date by including them in the qualifying period. The Council and NMFS adequately notified the fishing industry that the future fishing privileges of new vessels entering the fisheries under Council authority were at risk by control date notices published September 5, 1990 (55 FR 36302), and June 21, 1993 (58 FR 33798), and the moratorium proposed rule published June 3, 1994 (59 FR 28827). The participation of a qualified vessel in a fishery that it did not participate in before February 9, 1992, was acknowledged by the Council in its revised moratorium proposal. This provision allows, for example, a vessel that qualified by participation in the groundfish fishery before February 9, 1992, and between February 10, 1992, and December 11, 1994, and that crossed over into the BSAI Area crab fishery, to continue access to the BSAI Area crab fishery during the moratorium. This crossover provision takes into account the investment in qualified vessels since February 9, 1992, but does not allow for qualification of vessels that began fishing for any moratorium species for the first time after that date.

One letter submitted after the close of the comment period stated that the vessel reconstruction provisions and the maximum length overall provisions amount to unlawful retroactive rulemaking under a recent U.S. Supreme Court decision, *Bowen v.*

Georgetown University Hospital, 488 U.S. 204 (1988). NMFS disagrees. The vessel reconstruction and length provisions are not retroactive rules and therefore are not governed by *Bowen*.

Classification

The Director, Alaska Region, NMFS, has determined that Amendment 23 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 28 to the FMP for Groundfish of the Gulf of Alaska, and Amendment 4 to the FMP for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area are necessary for the conservation and management of the BSAI groundfish and crab fisheries and the GOA groundfish fisheries and are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws.

The Council prepared a final regulatory flexibility analysis as part of the regulatory impact review, which indicates that this rule could have a significant economic impact on a substantial number of small entities. A summary of this determination is included in the proposed rule (60 FR 25677, May 12, 1995). A copy of the EA/RIR/FRFA 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 0648-0206). This approval expires April 30, 1997. 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. The public paperwork burden for this collection is estimated to average 3.33 hours per response, including the time needed for reviewing 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 Management and Budget, Paperwork Reduction Project (0648-0206), Washington, DC, 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, 675, and 677

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 676

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 31, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 671, 672, 675, 676, and 677 are amended 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. Effective September 11, 1995, § 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. Effective September 11, 1995, § 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. Effective January 1, 1996, through December 31, 1998, § 671.4 is revised to read as follows:

§ 671.4 Permits.

(a) All processors of Bering Sea and Aleutian Islands area king and Tanner crab must comply with the permit requirements of § 677.4 of this chapter.

(b) In addition to any other permits that may be required by Federal or state regulations, a moratorium permit may be required by part 676 of this chapter for a vessel of the United States if the vessel is used to catch and retain king or Tanner crab in the Bering Sea and Aleutian Islands Area.

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. Effective September 11, 1995, through December 31, 1995, § 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. Effective January 1, 1996, through December 31, 1998, § 672.4, paragraphs (a) and (b)(1) introductory text are revised, and paragraph (k) is added to read as follows:

§ 672.4 Permits.

(a) *General.* No vessel of the United States may be used to fish for

groundfish in the Gulf of Alaska unless the owner first obtains a Federal fisheries permit for the vessel issued under this part. The owner of such vessel must renew the Federal fisheries permit annually. Federal fisheries permits are issued without charge.

(b) *Application.* (1) The vessel permit required under paragraph (a) of this section may be obtained or renewed by submitting to the Regional Director a written application containing the following information:

* * * * *

(k) *Moratorium permit.* In addition to the Federal fisheries permit required by paragraph (a) of this section and any other permits that may be required by Federal or state regulations, a moratorium permit may be required by part 676 of this chapter for a vessel of the United States if the vessel is used to conduct directed fishing for moratorium groundfish species, as defined at § 676.2 of this chapter, in the Gulf of Alaska.

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. Effective September 11, 1995, through December 31, 1995, § 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. Effective January 1, 1996, through December 31, 1998, § 675.4, paragraphs (a) and (b)(1) introductory text are revised, and paragraph (k) is added to read as follows:

§ 675.4 Permits.

(a) *General.* No vessel of the United States may be used to fish for groundfish in the Bering Sea and Aleutian Islands management area unless the owner first obtains a Federal fisheries permit for the vessel issued under this part. The owner of such vessel must renew the Federal fisheries permit annually. Federal fisheries permits are issued without charge.

(b) *Application.* (1) The vessel permit required under paragraph (a) of this section may be obtained or renewed by submitting to the Regional Director a

written application containing the following information:

* * * * *

(k) *Moratorium permit.* In addition to the Federal fisheries permit required by paragraph (a) of this section and any other permits that may be required by Federal or state regulations, a moratorium permit may be required by part 676 of this chapter for a vessel of the United States if 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.

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, 676.2 676.5, and 676.6 effective September 11, 1995, through December 31, 1998 and §§ 676.3 and 676.4 are effective January 1, 1996 through December 31, 1998, 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 qualification; lost or destroyed vessels; reconstructed vessels.
- 676.5 Procedures.
- 676.6 Prohibitions.
- 676.7–676.9 [Reserved]

Subpart A—Moratorium on Entry

§ 676.1 Purpose and scope.

The sections of this subpart are effective from September 11, 1995, through December 31, 1998, unless otherwise noted. This subpart implements a moratorium on the entry of new vessels in the commercial fisheries for groundfish in the Gulf of Alaska and Bering Sea and Aleutian Islands management area and in the commercial fisheries for king and Tanner crabs in the Bering Sea and Aleutian Islands Area.

§ 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:

Bering Sea and Aleutian Islands Area means, with respect to moratorium crab species, the area over which the United States exercises exclusive fishery

management authority as defined at part 671 of this chapter.

Bering Sea and Aleutian Islands management area means, with respect to moratorium groundfish species, the area over which the United States exercises exclusive fishery management authority as defined at part 675 of this chapter.

Catcher/processor vessel means a vessel that can be used as a catcher vessel and that 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 not including heading and gutting unless additional preparation is done.

Catcher vessel means, with respect to moratorium groundfish species, a catcher vessel as defined at parts 672 and 675 of this chapter, or, with respect to moratorium crab species, 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.

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

Gulf of Alaska means, with respect to moratorium groundfish species, the area over which the United States exercises exclusive fishery management authority as defined at part 672 of this chapter.

Legal landing means any amount of a moratorium species that was or is landed in compliance with Federal and state commercial fishing 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 accident and has been reported to the U.S. Coast Guard on U.S. Coast Guard Form 2692, Report of Marine Casualty.

Maximum LOA with respect to a vessel's eligibility for a moratorium permit means:

(1) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is less than 125 ft (38.1 m) LOA, 1.2 times the original qualifying LOA or 125 ft (38.1 m), whichever is less;

(2) Except for a vessel under reconstruction on June 24, 1992, if the original qualifying LOA is equal to or greater than 125 ft (38.1 m), the original qualifying LOA; and

(3) For an original qualifying vessel under reconstruction on June 24, 1992, the LOA on the date reconstruction was completed, provided that maximum LOA is certified under § 676.4(e).

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 qualification means a transferable prerequisite for a moratorium permit.

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

Original qualifying LOA means the LOA of the original qualifying vessel on June 24, 1992.

Original qualifying vessel means a vessel that made a legal landing during the qualifying period.

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 from January 1, 1988, through February 9, 1992.

Reconstruction means a change in the LOA of the vessel from its original qualifying LOA.

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

§ 676.3 Moratorium permits.

This section is effective from January 1, 1996, through December 31, 1998.

(a) *General requirement.* Except as provided under paragraph (b) of this section, any vessel used to catch and retain any moratorium crab species or to conduct directed fishing for any moratorium groundfish species must have a valid moratorium permit issued for that vessel under this part on board the vessel at all times it is engaged in fishing activities. The term of the moratorium permit is for the duration of the moratorium unless otherwise specified.

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

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

(ii) The vessel's moratorium qualification has not been transferred;

(iii) The permit has not been revoked or suspended under 15 CFR part 904 (Civil Procedures);

(iv) The permit is endorsed for all gear types on board the vessel; and

(v) The permit's term covers the fishing year in which the vessel is fishing.

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

(b) *Moratorium exempt vessels.* A moratorium exempt vessel is not subject to the moratorium permit requirement of paragraph (a) of this section and is not eligible for a moratorium permit. A moratorium exempt vessel may catch and retain moratorium species provided it complies with the permit 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 of Alaska regulations. A moratorium exempt vessel is a vessel in any of the following categories:

(1) Vessels other than catcher vessels or catcher/processor vessels;

(2) Catcher vessels or catcher/processor vessels less than or equal to 26 ft (7.9 m) LOA that conduct directed fishing for groundfish in the Gulf of Alaska;

(3) Catcher vessels or catcher/processor vessels less than or equal to 32 ft (9.8 m) LOA that catch and retain moratorium crab species in the Bering Sea and Aleutian Islands Area or that conduct directed fishing for moratorium groundfish species in the Bering Sea and Aleutian Islands management area;

(4) Catcher vessels or catcher/processor vessels that are fishing for IFQ halibut, 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 are not directed fishing for any moratorium species; or

(5) Catcher vessels or catcher/processor vessels less than or equal to 125 ft (38.1 m) LOA that after November 18, 1992, are specifically constructed for and used in accordance with a Community Development Plan approved under § 675.27 of this chapter, and are designed and equipped to meet specific needs that are described in the Community Development Plan.

(c) *Moratorium qualification.* A vessel has moratorium qualification if the vessel is an original qualifying vessel, is not a moratorium exempt vessel under paragraph (b) of this section, and its

moratorium qualification has not been transferred. A vessel also has moratorium qualification if it receives a valid moratorium qualification through a transfer approved by the Regional Director under § 676.4 and that moratorium qualification is not subsequently transferred.

(d) *Moratorium permit endorsements.* A moratorium permit will be endorsed for one or more fishery-specific gear type(s) in accordance with the endorsement criteria of paragraph (e) of this section. A fishery-specific gear type endorsement authorizes the use by the vessel of that gear type in the specified fisheries. Fishing gear requirements for the Bering Sea and Aleutian Islands Area crab fisheries as set forth in the Alaska Administrative Code at title 5, chapters 34 and 35; and fishing gear requirements for the Gulf of Alaska and the Bering Sea and Aleutian Islands management area groundfish fisheries are set forth at parts 672 and 675 of this chapter. A moratorium permit may be endorsed for any one or a combination of the following fishing gear types:

(1) Trawl, which includes pelagic and nonpelagic trawl gear;

(2) Pot, which includes longline pot and pot-and-line gear; and

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

(e) *Gear endorsement criteria.* For purposes of this paragraph, from January 1, 1988, through February 9, 1992, is "period 1," and from February 10, 1992, through December 11, 1994, is "period 2." Fishery-specific gear type endorsement(s) will be based on the following criteria:

(1) *Crab fisheries/pot gear endorsement.* A moratorium permit for a vessel may be endorsed for crab fisheries/pot gear 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 fisheries/rawl gear endorsement.* A moratorium permit may be endorsed for groundfish fisheries/rawl gear 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 fisheries/pot gear endorsement.* A moratorium permit may be endorsed for groundfish fisheries/pot gear 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 fisheries/hook gear endorsement.* A moratorium permit may be endorsed for groundfish fisheries/hook gear 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 qualification; lost or destroyed vessels; reconstructed vessels.

This section is effective from January 1, 1996, through December 31, 1998.

(a) *General.* A transfer of a vessel's moratorium qualification must be approved by the Regional Director before a moratorium permit may be issued for the vessel to which the qualification is transferred. A moratorium permit is not transferrable or assignable. A fishery-specific gear type endorsement(s) is not severable from an endorsed permit. A transfer of moratorium qualification will not be approved by the Regional Director unless:

- (1) A complete transfer application that satisfies all requirements specified at § 676.5 is submitted;
- (2) The LOA of the vessel to which the moratorium qualification is transferred does not exceed the maximum LOA of the original qualifying vessel; and
- (3) The moratorium permit associated with the moratorium qualification is not revoked or suspended.

(b) *Vessels lost or destroyed in 1988.* The moratorium qualification of a vessel that was lost or destroyed before January 1, 1989, may not be transferred to another vessel and is not valid for purposes of issuing a moratorium permit for that vessel, if salvaged, unless salvage began on or before June 24, 1992, and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of such a vessel is not valid for purposes of issuing a moratorium permit for 1998 unless that vessel is used to make a legal landing of a moratorium species from January 1, 1996 through December 31, 1997.

(c) *Vessels lost or destroyed from 1989 through 1995.* The moratorium

qualification of any vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, is valid for purposes of issuing a moratorium permit for that vessel, if salvaged, regardless of when salvage began provided that the vessel has not already been replaced and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1989, but before January 1, 1996, may be transferred to another vessel provided the LOA of that vessel does not exceed the maximum LOA of the original qualifying vessel. The moratorium qualification of such a vessel is not valid for purposes of issuing a moratorium permit for 1998 unless that vessel is used to make a legal landing of a moratorium species from January 1, 1996 through December 31, 1997.

(d) *Vessels lost or destroyed after 1995.* The moratorium qualification of any vessel that was lost or destroyed on or after January 1, 1996, is valid for purposes of issuing a moratorium permit for that vessel, if salvaged, regardless of when salvage began provided that the vessel has not already been replaced and the LOA of the salvaged vessel does not exceed its maximum LOA. The moratorium qualification of any vessel that is lost or destroyed on or after January 1, 1996, may be transferred to another vessel providing the LOA of that vessel does not exceed the maximum LOA of the original qualifying vessel.

(e) *Reconstruction.* The moratorium qualification of a vessel is not valid for purposes of issuing a moratorium permit if, after June 23, 1992, reconstruction is initiated that results in increasing the LOA of the vessel to exceed the maximum LOA of the original qualifying vessel. For a vessel whose reconstruction began before June 24, 1992, and was completed after June 24, 1992, the maximum LOA is the LOA on the date reconstruction was completed provided the owner files an application for transfer and the Regional Director certifies that maximum LOA and approves the transfer based on information concerning the LOA of the reconstructed vessel submitted under § 676.5(d)(6).

§ 676.5 Procedures.

(a) *General.* An application for a moratorium permit may be requested from the Restricted Access Management Division, Alaska Region, NMFS, 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 of the United States, a moratorium permit will be issued to 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 permit must include the following information for each vessel:

- (1) Name of the vessel, state registration number of the vessel and, the U.S. Coast Guard documentation number of the vessel, if any;
- (2) Name(s), business address(es), and telephone and fax numbers of the owner of the vessel;
- (3) Name of the managing company;
- (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 from January 1, 1988, through February 9, 1992;
- (5) Reliable documentation of the vessel's original qualifying LOA if requested by the Regional Director, 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 its LOA, and are dated before June 24, 1992;
- (6) Specification of the fishing gear(s) used from January 1, 1988, through February 9, 1992, and (if necessary) the fishing gear(s) used 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) *Moratorium permit issuance.* The owner of a vessel of the United States that has moratorium qualification will be issued a moratorium permit upon application if the vessel's LOA does not exceed its maximum LOA.

(d) *Application for approval of a moratorium qualification transfer.* An application for approval of a transfer of moratorium qualification must be completed and the transfer approved by the Regional Director before an application for a moratorium permit based on that transfer can be approved. An application for approval of a transfer and an application for a moratorium permit may be submitted

simultaneously. A complete application for approval of transfer must include the following information as applicable for each vessel involved in the transfer of moratorium qualification:

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

(2) Name of the vessel whose moratorium qualification is to be or was transferred and the name of the vessel that would receive or received the transferred moratorium qualification (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 LOA of the vessel whose moratorium qualification is to be or was transferred, its current LOA, and its maximum LOA;

(4) The LOA of the vessel that would receive or received 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 is to be or is transferred, the date of the transfer agreement, names and signatures of all current owner(s) of the vessel whose moratorium qualification is to be or was transferred, and names and signatures of all current owner(s) of the moratorium qualification that is to be or was transferred;

(6) With regard to 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 would be transferred or their representative, and the persons who would receive the transferred moratorium qualification or their representative, unless NMFS determines that the signatures provided under paragraph (d)(5) of this section satisfy this requirement.

(e) *Appeal.* (1) The Chief, Restricted Access Management Division, Alaska Region, NMFS, will issue an initial administrative determination to each applicant who is denied a moratorium 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 if a written appeal is not received by the Chief, Restricted Access Management Division, Alaska Region, NMFS, within the period specified at § 676.25(d).

(2) An initial administrative determination that denies an application for a moratorium 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.

(3) An administrative determination denying approval of the transfer of a moratorium qualification and/or denying the issuance of a moratorium permit based on that moratorium qualification is the final agency action for purposes of judicial review.

§ 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 permit application or application to transfer moratorium qualification;

(b) Alter, erase, or mutilate any moratorium 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 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 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]

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

13. The authority citation for part 677 continues to read as follows:

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

14. Effective September 11, 1995, Figure 1 to part 677, *Federal Processor Permit Application (Form FPP-1)*, is removed and reserved.

15. Effective September 11, 1995, § 677.4(b) introductory text is revised as follows:

§ 677.4 Permits.

* * * * *

(b) *Application.* The permit required under paragraph (a) of this section may be obtained or renewed by submitting to the Regional Director a completed Federal Processor Permit Application for each vessel or processor containing the following information:

* * * * *

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