

**FINAL**  
**ENVIRONMENTAL ASSESSMENT, REGULATORY IMPACT REVIEW, AND**  
**FINAL REGULATORY FLEXIBILITY ANALYSIS**

**FOR A**

**MORATORIUM ON THE ENTRY OF NEW VESSELS INTO THE**  
**GROUNDFISH AND CRAB FISHERIES**

**FOR**

**AMENDMENT 28 TO THE FISHERY MANAGEMENT PLAN**  
**FOR GROUNDFISH**  
**OF THE GULF OF ALASKA**

**AMENDMENT 23 TO THE FISHERY MANAGEMENT PLAN**  
**FOR THE GROUNDFISH FISHERY**  
**OF THE BERING SEA AND ALEUTIAN ISLANDS**

**AMENDMENT 4 TO THE FISHERY MANAGEMENT PLAN**  
**FOR THE COMMERCIAL KING AND TANNER CRAB FISHERIES**  
**IN THE BERING SEA AND ALEUTIAN ISLANDS AREA**

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**Anchorage, Alaska**

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## SUPPLEMENTAL ANALYSIS FOR RESUBMISSION

of

### VESSEL MORATORIUM

by

North Pacific Fishery Management Council

January 22, 2010

#### EXECUTIVE SUMMARY

1. The North Pacific Fishery Management Council (Council) approved revisions to its proposed moratorium in response to concerns raised by the Secretary of Commerce (Secretary). As requested by NMFS, the Council (1) shortened the qualifying period from the original January 1, 1980 to February 9, 1992, to the revised January 1, 1988 to February 9, 1992; (2) eliminated halibut and sablefish fixed gear fisheries because they will be managed with Individual Fishing Quotas (IFQs) beginning in 1995; (3) considered current participation in 1992-1994, but did not extend the February 9, 1992, cutoff date for basic moratorium qualification; (4) restricted crossover ability between fisheries during the moratorium; and (5) revised the appeals process to be the same as for the sablefish and halibut IFQ program. As originally proposed, the moratorium will sunset 3 years from the effective date.

2. The Council's revisions reduce the potential fleet size from 13,350 vessels under the original moratorium to 4,144 vessels under the revised moratorium. Of the 4,144 qualified vessels, 255 qualified based on crab landings only, 231 based on crab and groundfish, and 3,658 based on groundfish only. Limits on upgrades in vessel size were retained from the original moratorium. The number of qualifying vessels is about 180 percent of the average number of vessels, 2,308 unique vessels, which operated each year 1988 through 1991 in the groundfish and crab fisheries.

3. By not extending the February 9, 1992, cutoff date to 1994, the Council eliminated 973 vessels, 494 of which were new to the fisheries. The remaining 479 vessels were not new to the fisheries, but were disqualified on the basis of the Secretary's requested revisions to the moratorium: the shortening of the qualification period and the elimination of halibut and sablefish fixed gear landings as qualifying criteria. The 973 vessels that were eliminated by not extending the cutoff date could have added substantial new capacity to the moratorium fisheries.

4. Crossovers between groundfish and crab fisheries are limited by the Council's revisions. Halibut and sablefish crossovers into groundfish and crab were eliminated, thus significantly reducing the problem. Crossovers between groundfish and crab fisheries, and vice-versa, were limited based on gear type or activity of the vessel during the secondary period of February 10, 1992 to December 11, 1994. Instead of 3,340 groundfish vessels having the opportunity to cross over into crab fisheries, there are now a maximum of 284 which could do so. The number of crab vessels which could cross over into groundfish has not changed, but is limited to only pot gear, unless the vessel also made groundfish landings with other gear types. The maximum number of crab vessels which could cross over, which have not already done so, is 179. The Council is comfortable with creating these limited crossover allowances. First, because crab abundance has declined recently and lucrative fisheries such as Bristol Bay red king crab have been closed, there will be little economic sense for groundfish vessels to invest in crab gear, especially in light of the fact that June 24, 1992, still is a prominent cutoff date for fishing histories for future limited entry (license limitation or IFQs). Second, though the more likely scenario is that some of the 179 crab vessels might gear up for groundfish, the June 24, 1992, cutoff date still serves as a deterrent to any major new investment. None of the options currently being considered by the Council for license limitation would recognize crossovers which occur during the moratorium years of 1995-1997.

5. Those crabbers that have crossed over were primarily in pot fisheries for Pacific cod. As such, the main impacts of increased capacity will be felt by the fixed gear portion of the Bering Sea cod fishery, or in the inshore cod fisheries in the Gulf of Alaska. Two mitigating factors of these focused

crossovers are that (1) pot fisheries have been shown to be relatively clean fisheries in terms of bycatch, and (2) the Pacific cod resource is very abundant and 1995 quotas are higher than 1994.

6. The impacts of the Secretary disapproving the Council's revised moratorium could be devastating and certainly would not be risk averse. The analysis shows that about 245,000 vessels potentially could enter the groundfish and crab fisheries off Alaska. The impacts of the 1800-vessel difference between the moratorium fleet and the current participant fleet, and the minor number of crab vessels that may cross over into the cod fisheries, pale in significance compared to the impacts that would result from a pulse influx of vessels from distressed areas and fisheries elsewhere in the United States if no moratorium is in place.

7. Written and verbal policy statements by representatives of the Secretary identify risk-prone management and overcapitalization as priority concerns in fisheries around the nation. If by disapproving the Council's revised moratorium, the Secretary chooses open access to North Pacific fisheries over a limitation on potential capitalization, that decision could lead to pulse influxes of effort and a heightened potential for overfishing. Such a decision would run counter to the Secretary's stated goals of risk-averse management and reduced effort. Such a decision would show that little has been learned from the current emergency need to expend almost \$50,000,000 on aid to New England and the Pacific Coast now because of resource failures.

8. The Council believes the moratorium will achieve its short term goal of stemming the flow of outside capacity into North Pacific crab and groundfish fisheries, thus keeping the situation from worsening while a longer term comprehensive rationalization plan is developed. The Secretary also has accepted that goal for the moratorium. The Council believes the moratorium comports with its comprehensive fishery management goals and those in the fishery management plans.

9. The Council believes the moratorium is consistent with all the national standards including numbers 1, 4, and 5 which were the basis for the Secretary's earlier disapproval. The moratorium will in no way degrade the ability to achieve optimum yield (OY), it does not discriminate between residents of different states, it is fair and equitable and will promote conservation, and it will not allow efficiency to be degraded by a large influx of new capacity. A decision to not implement a moratorium would act in the reverse direction. It could lead to exceeding OY and overfishing, it does not promote conservation, and it will degrade efficiency as new effort enters the fisheries. That choice clearly is not consistent with the national standards.

## I. INTRODUCTION AND BACKGROUND

On June 24, 1992, the North Pacific Fishery Management Council (Council) approved for Secretarial review a moratorium on vessel entry into the groundfish, halibut, and crab fisheries in the North Pacific under Council jurisdiction. A proposed rule was published in the Federal Register by the Secretary of Commerce (Secretary) on June 3, 1994, nearly 2 years after the Council's action. The moratorium was disapproved by the Secretary on August 5, 1994, citing the following primary reasons:

1. **Qualification period** - The original qualification period approved by the Council was from January 1, 1980 to February 9, 1992. The Secretary notes in its disapproval letter that this lengthy period for moratorium qualification would allow potentially more vessels to participate in the fisheries than have done so recently. Many of these vessels participated during the early stages of the fisheries, are no longer active today, and could re-enter the already overcapitalized fisheries.
2. **Halibut and sablefish qualification** - The originally-proposed moratorium would have qualified vessels for entry into the groundfish and crab fisheries on the basis of landings of halibut or sablefish (fixed gear) during the qualification period. Because these two fisheries will be under the IFQ program in 1995, the Secretary felt that inclusion of these fisheries was unwarranted. It would allow significantly more vessels to qualify for the moratorium and to enter into the groundfish and crab fisheries than if such qualification were excluded.
3. **Consideration of current participation** - The Secretary's letter also requested that the Council at least consider current participation (vessels which entered the fisheries after the February 9, 1992, moratorium cutoff date) and provide a rationale for exclusion of these vessels. The disapproval letter noted that the Council should consider participation in 1992 and 1993, a period which partially covers that which has elapsed between Council action and Secretarial disapproval.
4. **Crossovers between groundfish and crab fisheries** - A primary concern noted in the Secretary's disapproval letter was the issue of crossovers (i.e., once qualified on the basis of any fishery, a vessel could move to any of the other fisheries covered by the moratorium). The Secretary's letter noted two problems with this: (1) Allowing crossovers runs counter to the need to limit capacity in fisheries which already have been identified as overcapitalized by the Council, and (2) there is an equity concern in that a vessel which participated in one fishery, but never in the other, could cross over into the other during the moratorium, but a vessel with a steady participation history since 1992 would not be allowed to participate in that fishery.
5. **Appeals process under the moratorium** - Finally, the Secretary's disapproval letter noted that the moratorium as submitted by the Council contains a separate appeals procedure to resolve disputes regarding moratorium eligibility. The letter states that such an appeals procedure is not necessary, due to the appeals process already in place in conjunction with the sablefish/halibut Individual Fishing Quota (IFQ) program.

The Magnuson Fishery Conservation and Management Act (Magnuson Act) provides the Council opportunity to submit revised fishery management plan (FMP) amendments that are fully or partially disapproved. The Council revised its proposed moratorium FMP amendments at its meetings in September 1994, and December 1994. The revised FMP amendments and implementing regulations were officially received by the Secretary on April 30, 1995. Public comment on the proposed rule began on May 12, 1995, and ended June 1, 1995.

This document is an analysis of the revised preferred alternative for purposes of determining consistency with the Magnuson Act and other applicable laws. This analysis serves as a final environmental assessment (EA) required by the National Environmental Policy Act, a regulatory impact review (RIR) required by Executive Order 12866, and a final regulatory flexibility analysis (FRFA) required by the Regulatory Flexibility Act. The final EA/RIR/FRFA incorporates the draft EA/RIR/Initial RFA (IRFA) dated April 28, 1994, and this supplemental analysis. The only difference between final EA/RIR/FRFA and the draft EA/RIR/IRFA is the addition of this supplemental analysis of the revised preferred alternative. No change was made to the April 28, 1994, draft analysis. That document, however, contains most of the background information and data on which this supplemental analysis is based.

These data are not repeated in the supplemental analysis or final EA/RIR/FRFA but are incorporated by reference.

## II. SUMMARY OF COUNCIL'S REVISED MORATORIUM

At its September 1994 meeting, the Council considered the Secretary's disapproval of the moratorium, point by point, and developed a revised moratorium. This was revisited again in December 1994 and further revisions were made, specific to the crossover issue. The Council's revised vessel moratorium, submitted for the Secretary's consideration, contains the following key elements (detailed rationale and supplemental analysis for the revised moratorium are contained in Section III):

1. The eligibility period for the moratorium will be January 1, **1988**, through February 9, 1992 (as opposed to the original qualification period of January 1, 1980, through February 9, 1992).
2. Remove halibut and sablefish (fixed gear) from the moratorium when both species come under the IFQ program (i.e., landings of halibut or fixed gear sablefish will not qualify a vessel to participate in groundfish and crab fisheries).
3. Crossovers between groundfish and crab fisheries are restricted subject to the following rules: (a) a vessel which made qualifying landings in both fisheries (January 1, 1988 to February 9, 1992) may continue to fish in both fisheries; (b) a vessel which made qualifying landings in one fishery (groundfish or crab) may participate in the other using the same gear with which it made the qualifying landing, and (c) a vessel which made qualifying landings in one fishery, and then made a legal landing in period two (February 10, 1992 to December 11, 1994) in the other fishery, may continue in the other fishery but only with the gear used in that fishery in period two. (PLEASE REFER TO SECTION III OF THIS DOCUMENT FOR THE ACTUAL MOTION LANGUAGE).
4. The appeals process for the moratorium will be the same as for the sablefish and halibut IFQ program.
5. As originally proposed, the moratorium will sunset 3 years from the effective date.

Revised Plan Amendment language for each of the affected plans is included in Attachment 1.

### **Fleet Size Under the Revised Moratorium**

Under the revised moratorium, 4,144 vessels will qualify based on landings from January 1, 1988, through February 9, 1992: 255 based on crab landings only; 231 based on crab and groundfish; and 3,658 based on groundfish only (Table 1). This is a very significant reduction from the potential fleet size of 13,507 vessels established in the original moratorium (13,350 vessels if revised data are used).

As discussed in the original analysis, measures of capacity are extremely difficult to develop and implement. Realizing this, the Council chose to use vessel numbers as a surrogate for capacity and to limit changes in length by a "20 percent rule." This rule allows moratorium vessels less than 125 ft (38.1 m) length overall (LOA) to be lengthened by 20 percent of the original qualifying length of the vessel, up to 125 ft (38.1 m) LOA. Vessels 125 ft (38.1 m) LOA or longer cannot be lengthened. Table 1 also presents length information for qualifying vessels.

Table 1: Moratorium qualified vessels by length and activity from 1/1/1988 - 2/9/1992.

	<35'	36-60'	61-90'	91-125'	126-190'	191'+	Total
Crab	22	22	52	99	50	10	255
Crab/ Groundfish	6	51	71	64	30	9	231
Groundfish	1,571	1,738	206	56	56	31	3,658
Total	1,599	1,811	329	219	136	50	4,144

### III. SUPPLEMENTARY INFORMATION FOR SPECIFIC PROVISIONS

The Council's response to the Secretary's disapproval partially depended on the information available to it at the September 1994 and December 1994 meetings. That information consisted of the April 28, 1994 Secretarial Review Draft of the EA/RIR/IRFA (EA) for the Proposed Moratorium on the Entry of New Vessels into the Groundfish, Crab, and Halibut Fisheries, and interpretations of the EA presented to the Council by its staff. Following the September 1994 Council meeting, additional data were requested and added into the original EA database. The results from the "new" data<sup>1</sup> were not available at the September 1994 Council meeting, but are included here when relevant. The data presented in the following section will be marked as "EA Data" or "New Data" to denote differences. Both data sets are included to show the information used by the Council and to provide the best information to the Secretary and the public during the review of the revised moratorium.

#### 1. **Qualification Period**

The Secretary indicated that the qualifying period chosen by the Council in the original moratorium "would have allowed fishing capacity, in terms of numbers of vessels, to increase significantly instead of being held roughly constant with that experienced in recent years." Recognizing this concern, the Council chose to tighten the moratorium qualifying period to January 1, 1988 to February 9, 1992. The EA Data in Table 2, used by the Council in September, estimate that the number of participating vessels decreases to 8,016 from the 13,507 that would have qualified under the original January 1, 1980 to February 9, 1992, qualifying period. Participating vessels include all vessels which made a landing of groundfish, crab, and/or halibut.

Table 2: Effects of shortening the qualifying period.

Source	EA Data		New Data	
	1/1/80-2/9/92	1/1/88-2/9/92	1/1/80-2/9/92	1/1/88-2/9/92
Participating Vessels	13,507	8,016	13,350	7,745

The New Data in Table 2 indicate that 13,350 vessels qualified using the earlier period and that 7,745 vessels participated during the new qualifying period, 271 fewer than shown by the EA Data. Thus the direct effect of shortening the qualification period alone is a reduction of about 5,500-5,600 vessels.

#### 2. **Halibut and Sablefish Fisheries**

The Secretary ". . . recommended no further Council effort to revise the moratorium with respect to including halibut . . . The halibut fishery will be managed under the IFQ program approved last year." The Council concurred, noting that the halibut fishery was originally included in the moratorium because the Secretary had yet to approve the IFQ program. Because halibut will be managed with IFQs beginning in 1995<sup>2</sup>, the Council removed the halibut fishery from the moratorium at the September 1994 meeting. By doing so, all vessels which qualified strictly because of their participation in the halibut fishery no longer will qualify for the groundfish and crab fisheries. Using the same rationale as for halibut, the Council also removed the fixed gear sablefish fishery as a qualifying fishery. Trawl landings of sablefish in the new qualifying period still would qualify a vessel for the Council's revised moratorium.

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Since early 1992, data available from ADF&G and NMFS have been updated and checked for accuracy. The original data contained some mis-identified vessels. Most of these have been corrected, which results in smaller but more accurate estimates of the number of qualifying vessels than in the original EA.

The IFQ program was recently upheld in Federal Court in which the plaintiffs were asking that the IFQ program be overturned. That decision is likely to be appealed.

Table 3 shows the effect of eliminating halibut and fixed gear sablefish. Of the 8,016 vessels shown by the EA Data to have fished in the groundfish, crab, and halibut fisheries during the new qualifying period, 3,768 landed only halibut during that period. These vessels would not qualify under the Council's revised moratorium. Therefore, eliminating the halibut and sablefish fisheries from the moratorium would result in a pool of 4,248 qualifying vessels based on EA Data. A more precise estimate was unattainable in the EA because sablefish was treated as groundfish and no data were presented on the number of vessels which landed only sablefish.

The New Data show that a total of 3,601 fewer vessels will qualify in the revised moratorium if sablefish and halibut are dropped as qualifying fisheries. Of these, 3,508 vessels fished only in the halibut fishery, while 93 vessels fished for sablefish or sablefish and halibut, but did not make other groundfish or crab landings during the revised qualifying period. The result is that eliminating halibut and fixed gear sablefish, coupled with the shortened qualifying period, reduces the pool of eligible vessels to 4,144. This number is about 180 percent of the average number of vessels, 2,308 unique vessels, which operated each year 1988 through 1991 in the groundfish and crab fisheries.



Table 3: Effects of removing halibut/sablefish fisheries (in addition to shortening the qualifying period).

Source	EA Data	New Data
Qualifying Period	1/1/88-2/9/92	1/1/88-2/9/92
Total Including Hibr & Sabl.	8,016	7,745
Halibut Only	3,768	3,508
Halibut and/or Sablefish Only	NA	93
Total Groundfish and /or Crab	4,248 <sup>1</sup>	4,144

<sup>1</sup>Includes vessels fixed gear sablefish vessels which in the original EA were included in the data as groundfish.

### 3. Current Participation

The Secretary asked the Council to consider participation in 1992 and 1993, to determine if all current participants should be included. The Council's general opinion is that it already considered "current participation" when making its final decision in June 1992. "Current" then was defined as up to February 9, 1992. Vessels entering the fisheries later were well noticed that their participation was highly speculative. The 2 years beyond February 9, 1992, constitute, in the Council's view, future participation relative to their original decision. Any perceived deficiency in the Council consideration of "current" participation is viewed as an artifact of the Secretary's delay in reviewing the moratorium. Therefore, the Council retained its original cutoff date of February 9, 1992. Nonetheless, the following is an analysis of the consequences of that decision.

Data available in September 1994 showed that 394 vessels had entered the fisheries for the first time after February 9, 1992. Of these, 343 fished halibut and 51 fished groundfish and/or crab. Of the 51 groundfish/crab vessels, at least 16 were under 26 ft (7.92 m) ( and would have been able to fish during the moratorium under the small boat exemption. This leaves 35 'relevant' vessels that were thought to have newly entered the groundfish/crab fisheries. This was considered a minimum estimate because some of the "halibut only" vessels may have participated in groundfish and/or crab fisheries.

Data developed since September provide a better picture of current participation and the ramifications of Council revisions to the moratorium. For this discussion, "current participation" is defined as participation during February 10, 1992, through mid-June 1994, further abbreviated for convenience to 1992-1994.

Table 4 and Figure 1 show that 3,380 unique vessels participated in the crab and groundfish fisheries in 1992-1994 (excluding fixed gear sablefish). This number is less than, but not a simple subset of, the 4,144 vessels that would be moratorium-qualified under the Council's revised criteria. Of the 3,380 current participants, only 2,407 vessels are moratorium qualified. The other 973 vessels would not qualify if the February 9, 1992, cutoff is retained for the reasons discussed below, some having to do with shortening the qualifying period and deletion of halibut and sablefish landings.

Of the 973 non-qualifiers, 494 vessels appear to be new entrants with no prior history in the groundfish, crab, fixed-gear sablefish or halibut fisheries<sup>3</sup>. The remaining 479 vessels were disqualified as follows: 150 vessels fished groundfish and crab only in 1980-1987, and therefore were disqualified by the Council's decision to shorten the qualifying period to 1988-1992; 285 vessels were disqualified by the Council's decision to remove sablefish and halibut based landings; and the final 44 vessels fished only halibut in 1980-1987. Allowing those vessels into the fisheries could significantly increase capacity, as shown by their size composition.

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Some of these "new entrants" may be replacements of vessels which are qualified for the moratorium. The extent of moratorium vessel replacement cannot be estimated until the implementation of the program.

Table 4: Current participation and the revised moratorium.

All revised moratorium eligible vessels	4,144
All current participants in crab and groundfish: 1992-1994 (halibut and sablefish vessels not included)	3,380
All revised moratorium eligible vessels which are also current participants	2,407
All current participants which are not qualified under revised moratorium	973
New entrants since February 10, 1992 (i.e., would not qualify under the original or revised moratorium)	494
Non-qualified current participants which fished crab or groundfish under original qualifying period (i.e., 80-87)	150
Non-qualified current participants which fished only halibut or sablefish under revised qualifying period	285
Non-qualified current participants which fished only halibut under original qualifying period (i.e., 80-87)	44

Table 5 shows the vessel lengths for the 973 vessels. Though many are less than 35 ft (10.7 m) LOA and may have been exempted in the Bering Sea and Aleutian Islands (BSAI), Gulf of Alaska (GOA), or both areas by the small boat exemption, a considerable number of larger vessels would be allowed to fish, including 11 over 126 ft (38.40 m) LOA. Table 6 breaks out the 973 vessels in terms of the fisheries activities in 1992-1994. An important finding is that 936 of the otherwise unqualified vessels only made groundfish landings in 1992-1994. Many of these vessels could become full time participants in the fisheries even though they may have qualified by virtue of 'accidental/incidental' landings, for example, a few pounds of rockfish by a sablefish or halibut vessel, or a few pounds of Pacific cod by a salmon or herring fisherman. Many of the vessels in the 36-60 ft (10.9-18.2 m) LOA category may have been limit seiners with limited groundfish landings. These types of vessels could play a larger role in the already overcapitalized groundfish and crab fisheries if the cutoff date were extended to June 30, 1994.

Table 5: Length composition of current participants that do not qualify for the proposed moratorium.

	Vessel Lengths								Total
	0'-26'	27'-32'	33'-35'	36'-60'	61'-90'	91'-125'	126'-190'	>190'	
Never Fished in Other Periods	241	81	10	122	18	11	8	3	494
Fished G'fish /Crab 1980 -87	10	37	18	69	12	4	0	0	150
Fished Halibut/Sable 1988-92	57	49	14	149	14	2	0	0	285
Fished Halibut 1980-87	16	8	2	17	1	0	0	0	44
<b>Total</b>	<b>324</b>	<b>175</b>	<b>44</b>	<b>357</b>	<b>45</b>	<b>17</b>	<b>8</b>	<b>3</b>	<b>973</b>

Note: The activities are listed in hierarchical order (no duplicates are included).

Table 6. Fisheries of non-qualified current participants during 1992-94.

	0'-26'	27'-32'	33'-35'	36'-60'	61'-90'	91'-125'	126'-190'	191' +	Total
Groundfish and Crab	1	3	0	0	3	1	2	0	10
Groundfish Only	313	162	44	357	39	15	3	3	936
Crab Only	10	10	0	0	3	1	3	0	27
<b>Total</b>	<b>324</b>	<b>175</b>	<b>44</b>	<b>357</b>	<b>45</b>	<b>17</b>	<b>8</b>	<b>3</b>	<b>973</b>

#### 4. Crossovers

Another aspect of 'current participation' to be considered has to do with the issue of crossovers (i.e., the ability of qualifying vessels to enter into fisheries other than those in which they qualified, such as groundfish to crab or vice-versa, and between gear types within the groundfish fisheries). The Council's original moratorium allowed unrestricted crossovers for moratorium qualifying vessels. The Council stated in its original analysis that it was aware that unrestricted crossovers could lead to increased capitalization. The Council felt, however, that a crossover restriction would be highly allocative in its own right and was more appropriately addressed in the long term Comprehensive Rationalization Plan (CRP) to which it had committed. In evaluating the differential impacts of the various moratorium alternatives under consideration, the Council stated outright that the moratorium would not, in and of itself, solve the problem of excess capacity in the fisheries. The primary goal was to limit the number of vessels, not determine which fisheries they could operate in nor restrict their flexibility to move between fisheries. In fact, considerable sentiment has been expressed in all limited entry discussions that fishermen should retain a "portfolio" of species so that they would have fishing opportunities even if one species cycled downward. This turned out to be particularly prescient in light of the recent downturn in the Bering Sea crab stocks.

The Council recognized that vessels would be allowed to "cross over" from groundfish to crab fisheries, or vice-versa, as well as "cross over" between individual species within both the crab and groundfish fisheries. Again, the Council felt that the crossover issue was more appropriately dealt with in a more comprehensive fashion, where they might deal with it even on a species level. This is in fact the direction the Council is heading with development of a license limitation program which includes alternatives for very specific area/species licenses, perhaps based on participation prior to June 24, 1992.

Notwithstanding these arguments, the Council revisited the crossover issue at the December 1994 meeting with the intent of submitting a moratorium to the Secretary which more fully addressed the concerns outlined in the August disapproval letter. That action by the Council, now forwarded as an integral part of the overall proposed moratorium, is summarized as follows:

1. A vessel that made a qualifying landing in the BSAI or GOA groundfish fisheries would be eligible to participate in the BSAI/GOA groundfish fisheries under the moratorium.
2. A vessel that made a qualifying landing in the BSAI crab fisheries would be eligible to participate in the BSAI crab fisheries under the moratorium.
3. A vessel that made a qualifying landing in the BSAI or GOA groundfish fisheries would be eligible to participate in the BSAI/GOA groundfish fisheries **AND** the BSAI crab fisheries under the moratorium providing:
  - (a) it uses only the same fishing gear in the BSAI crab fisheries that it used in the groundfish fisheries to qualify for the moratorium, and

(b) it does not use any fishing gear prohibited in the BSAI crab fisheries.

4. A vessel that made a qualifying landing in the BSAI crab fisheries would be eligible to participate in the BSAI crab fisheries **AND** the BSAI/GOA groundfish fisheries under the moratorium providing:

(a) it uses only the same fishing gear in the groundfish fisheries that it used in the BSAI crab fisheries to qualify for the moratorium, and

(b) it does not use any fishing gear prohibited in the BSAI or GOA groundfish fisheries.

5. A vessel that made a qualifying landing in the BSAI or GOA groundfish fisheries, and during the period February 10, 1992, through December 11, 1994, made a landing in the BSAI crab fisheries, would be eligible to continue to participate in the BSAI crab fisheries under the moratorium using the gear with which the crab landing was made.

6. A vessel that made a qualifying landing in the BSAI crab fisheries, and during the period February 10, 1992, through December 11, 1994, made a landing in the BSAI or GOA groundfish fisheries, would be eligible to continue to participate in the BSAI/GOA groundfish fisheries under the moratorium using the gear with which the groundfish landing was made.

#### Purpose

This action still requires that a vessel had to have made a landing of either groundfish or crab in the basic qualifying period January 1, 1988 to February 9, 1992. This change in the revised vessel moratorium would allow limited crossovers of BSAI crab fishing vessels into the groundfish fisheries under the moratorium without those vessels having made qualifying landings in the groundfish fisheries. It also would allow limited crossovers of BSAI/GOA groundfish vessels into the BSAI crab fisheries without those vessels having made qualifying landings in those crab fisheries. For example, a vessel that made a qualifying landing in the BSAI crab fisheries using pot gear would be limited to using pot gear to harvest groundfish. Likewise, a vessel that qualified under the moratorium for a groundfish permit would be limited to using the same gear type it used in the groundfish fisheries to harvest crab as long as the gear was not prohibited in the BSAI crab fisheries. This limited crossover provision recognizes the similarity of the groundfish and crab fisheries in terms of pot fishing gear. It also would prevent a vessel from dramatically changing its configuration while the Council develops a comprehensive rationalization management program for groundfish and crab fisheries.

The primary intent of the Council's proposed crossover provisions is to limit the ability of groundfish vessels to cross over into already over-capitalized crab fisheries and vice-versa, and to limit the ability of groundfish vessels to cross over to different gear types within the groundfish fisheries. The Council feels that the most appropriate way to accomplish this within the proposed moratorium is with restrictions based on gear type. For example, only those groundfish vessels which qualified with pot gear for groundfish would be eligible to enter the crab fisheries (if not already qualified for crab). Conversely, the only groundfish fishery that a crab qualified vessel can enter is the pot fishery for groundfish, primarily the Pacific cod fisheries. However, the Council wished to recognize those vessels which have already crossed over into other fisheries as of December 11, 1994. For example, if a vessel qualifies for crab, it would be allowed to fish for groundfish with pot gear, and whatever other gear type it used between February 10, 1992, and December 11, 1994.

In terms of item number 6 above, the different gear types to be defined for purposes of the moratorium will be: (1) Pot gear for crab, (2) pot gear for groundfish, (3) trawl gear for groundfish, and (4) hook and line gear for groundfish, which includes longline, jig gear, and troll gear. This will result in the following categories of moratorium permits:

- Permit #1: Crab pot/groundfish pot
- Permit #2: Crab pot/groundfish pot/groundfish trawl
- Permit #3: Crab pot/groundfish pot/groundfish hook
- Permit #4: Crab pot/groundfish pot/groundfish trawl/groundfish hook
- Permit #5: Groundfish pot/groundfish trawl/groundfish hook

There are various ways in which a vessel can qualify for the different moratorium permits. For example, Permit #1 would be given to any vessel which made only crab landings during the qualifying period (January 1, 1988 to February 9, 1992), though they have also made landings of groundfish with pot gear during the secondary period. The vessel would also receive the groundfish pot 'endorsement' which would enable it to cross over into the groundfish fisheries, but only with pot gear. Permit #2 could result from the same example as in #1, but where the vessel also fished groundfish with trawl gear during the secondary period, from February 10, 1992 to December 11, 1994. Similarly, Permit #3 would result from the same situation, but where the vessel made only hook gear landings for groundfish during the

secondary period.

Permit #4 could result in a few different ways: (1) A vessel made both crab and groundfish landings during the qualification period, in which case that vessel is free to use any legal gear type for groundfish under the moratorium, (2) a vessel landed only groundfish during the qualification period (so it gets all gear endorsements), but did so with pot gear which also gives it the crab endorsement, (3) a vessel made only crab landings during the moratorium qualification period (which also gives it the groundfish pot endorsement), but also made landings of groundfish with trawl and hook gear during the secondary period.

Permit #5 is the only one which does not include a crab endorsement and would result from a vessel which landed only groundfish during the qualification period with other than pot gear. This would entitle the vessel to all gear endorsements for groundfish, but no endorsement for crab. If that vessel landed crab during the secondary period, then it would receive the crab endorsement and would receive Permit #4. As is apparent, all moratorium qualified vessels will have the ability to fish groundfish with pot gear. The actual numbers of vessels in each of the aforementioned permit categories is shown in Table 7:

Table 7: Numbers of Moratorium Qualified Vessels by Permit Type and Length

Permit Type	0-35 ft.	35-60 ft.	61-90 ft.	91-125 ft.	126-190 ft.	191+ ft.	Total
1-Crab & Groundfish (Pots)	20	12	34	69	38	6	179
2-Crab & Groundfish (Pots and Trawl)	0	2	0	0	3	1	6
3-Crab & Groundfish (Pots and Hook)	0	1	4	10	0	0	15
4-Crab & Groundfish (Pots, Trawl and Hook)	70	248	129	92	48	17	604
5-Groundfish (Pots, Trawl and Hook)	1,509	1,548	162	48	49	24	3,340
<b>Total</b>	<b>1,599</b>	<b>1,811</b>	<b>329</b>	<b>219</b>	<b>138</b>	<b>48</b>	<b>4,144</b>

Table 7 shows the 4,144 qualified participants by Permit type. The vast majority of the vessels (3,340) will receive Permit #5 because they qualified by virtue of groundfish landings with other than pot gear, and did not participate in the crab fisheries in either the moratorium qualifying period or the secondary period. As such they will be limited to participation in only the groundfish fisheries under the moratorium and cannot cross over into crab fisheries.

Permit #s 1 through 4 are issued to the remaining 804 vessels. Of these, 604 will be Permit #4 which will allow the recipient to participate in both crab and groundfish fisheries with all legal gear types. As seen in the Table there are several participation patterns which could result in Permit #4. Two hundred and thirty one (231) receive Permit #4 because they fished in both groundfish and crab during the moratorium qualification period. Fifty-five (55) vessels receive Permit #4 because they participated in the crab fisheries during the qualification period, and then used both hook and trawl gear for groundfish during the secondary period (these vessels may also have used pot gear during the secondary period, but their crab landings would qualify them for groundfish pot gear anyway). Thirty-four (34) vessels receive Permit #4 because they crossed over into crab in the secondary period after qualifying for groundfish. Finally, 284 vessels have never made a landing in the crab fisheries but will receive Permit #4 because they used pot gear to land groundfish during the basic moratorium qualification period. Therefore, 284 is the number of vessels which could go into crab fishing which have never landed crab before (i.e., the number of potential crossovers from groundfish to crab). Under the original moratorium that number would have been 3,340.

The ability to cross over from crab fisheries to groundfish fisheries, or to cross over from one groundfish gear type to another, is more liberal under the proposed moratorium. Any vessel which qualifies by virtue of crab landings will be able to also fish groundfish, but only with pot gear. Any vessel which qualifies for groundfish, by virtue of a groundfish landing with any gear type, is entitled to fish for groundfish with any gear type under the moratorium. A groundfish landing with pot gear during the moratorium qualification period offers the vessel the greatest potential flexibility under the moratorium -they may fish any moratorium species, including crab, with any legal gear type. In terms of potential crossovers of crab vessels into groundfish fisheries, it is true that any crab qualified vessel may also fish groundfish with pot gear. They may also fish groundfish with other gear if they used that other gear type to land groundfish during the secondary period.

The remaining 200 vessels receiving Permit #s 1 through 3 did not participate in the groundfish fisheries during the moratorium qualification period. These vessels will be allowed to fish in the crab fisheries, and in the groundfish fisheries with gear restrictions. The 179 vessels receiving Permit #1 will be allowed to use only pot gear, and represent those vessels which may cross over from crab to groundfish under the moratorium. Permit #2 will allow the 6 vessels to fish for crab and to use pots and trawls for groundfish. Similarly, Permit #3 will allow the 15 vessels to fish for crab and to use pots and hook gear in groundfish fisheries. The Council wished to recognize the investment made by these vessels in the spirit of the original moratorium proposal which would have allowed these crossovers anyway.

In summary, it is the 179 vessels in row 1 of Table 7 which represent the maximum potential future crossovers of crab vessels into the groundfish fisheries, and this is allowed only with the same gear type -pot gear. It is a maximum because some of those 179 vessels may have already used pot gear for

groundfish in the secondary period. Again, vessels which have already crossed over in the secondary period will be limited to the gear type used during that time. The Council feels that the crossover provisions as proposed strike an appropriate balance between limiting further capacity increases by fishery and recognizing investments already made during the two and a half years since Council approval of the original moratorium. The moratorium as now proposed limits future crossovers between groundfish and crab fisheries, and limits crossovers between gear types for groundfish relative to endorsements earned during the secondary period. The Council believes that this moratorium preserves much of the flexibility for fishermen which was originally intended under the moratorium while also addressing the concerns of the Secretary relative to future crossovers and overall capacity in the fisheries. Finally, it also addresses the equity issue raised by the Secretary regarding vessels which would receive crab endorsements, for example, but have never fished crab, while other vessels which are currently fishing crab would not receive the same. The revised moratorium addresses that perceived inequity without compromising the basic moratorium eligibility period.

This action by the Council is quite restrictive to crossovers relative to the original moratorium proposal. It reduces the number of groundfish vessels which may potentially cross over into crab fisheries (from 3,340 down to 284) and limits the number of crab vessels which might cross over into groundfish to 179. The net effect is to significantly reduce the number of groundfish vessels which might enter depressed crab fisheries, while allowing fishermen in the depressed crab fisheries to diversify into groundfish. Many of the Bering Sea and Aleutian crab stocks have declined recently. For example, the Bristol Bay commercial red king crab fishery will not open in 1994/1995, and *C. bairdi* Tanner crab will not open east of 163°W. Additionally, NMFS surveys have shown continued low abundance of marketable size *C. opilio*. Even during the past 2 years when crab stocks were more abundant, only 30 groundfish vessels crossed over into crab. All in all it seems unlikely that there would be much pressure for groundfish vessels to cross over into crab anyway.

Up to 179 crabbers could cross over into groundfish, but only with pot gear, and that would appear to be more likely than the reverse. It may make economic sense to convert crabbers into pot boats for groundfish, which will be allowed. Groundfish pot fisheries, however, are limited mainly to Pacific cod in the GOA or the BSAI. In the GOA, 90 percent of the cod quota is allocated to inshore fisheries, so that is where most crabbers would have to participate. Fortunately, the cod total allowable catch (TAC) in the GOA is much higher in 1995 than it was in 1994. Therefore, any increased capacity in the Gulf that results from a crab-to-cod crossover can be absorbed by a larger resource base.

In the BSAI, the cod harvest level also has increased, from 191,000 mt in 1994 to 250,000 mt in 1995. If crab vessels cross over into the cod fishery in the Bering Sea, their main impact would be on that portion of the cod TAC that is assigned to the fixed gear fishery, 44 percent of the TAC. Because of this gear allocation, the impact of a crossover, at this time unknown in extent, at least would be confined to only one portion of the overall cod fishery, and would not impact the overall BSAI groundfish fishery. Again, it is unknown how many vessels would choose to invest in cod pot gear considering the likelihood of limited entry based on participation before June 24, 1992. Those that do would at least have a net increase in cod resource base Alaska-wide on which to fish in 1995 and perhaps beyond.

In summary, the crossover issue has been identified as a very critical issue by the Secretary in considering whether to approve a revised moratorium. The proposed revisions to the crossover issue offered by the Council at this time appear to fully address the Secretary's concerns, while also accommodating the Council's desire to allow for some flexibility for fishermen during development of a comprehensive management program.

In December 1994, the Council also considered, and rejected, the idea of applying the crossover provisions retroactively (i.e., to the period from January 1, 1980 to January 1, 1988) which was deleted as part of the basic moratorium eligibility period. For example, a vessel which fished crab during that period, then qualifies for the new moratorium by virtue of groundfish landings other than pot gear, would also receive the crab endorsement, much like the allowance of crossovers in the secondary period - February 10, 1992 to December 11, 1994. The Council received information that such a provision would allow an additional 71 vessels to qualify for the crab fisheries, 24 of which are greater than 90 ft (27.4 m) LOA. This would have also allowed an additional 17 vessels to qualify for groundfish. The additional capacity which would have been generated by this action, particularly for the crab fisheries, was contrary to the Council's moratorium goals and was rejected.

#### Transferability and Separability Considerations



Under the Council's original moratorium there would have been only one type of moratorium permit created, and it would have applied to both crab and groundfish fisheries, and to all gear types for groundfish. Transfers of these moratorium rights were intended to be allowed, subject to the upgrade restrictions, as long as the original vessel is retired from the fisheries. Under the revised moratorium proposed by the Council, the intent is to still allow such transfers; however, the creation of different 'endorsements' (such as groundfish, crab, or gear type) adds a complicating factor to the issue of transfers. For example, can a vessel which qualifies for various endorsements transfer one or more of those endorsements to another vessel? Because the overriding intent of the moratorium is to freeze the total number of vessels operating in the fisheries, such an allowance would be contrary to the moratorium goals as it would allow the potential for additional vessels, beyond the 4,144 which qualify, to enter the fisheries. Therefore, the intent of the Council is that a moratorium permit, regardless of the endorsements it carries, may be transferable, but only as a whole, with the original vessel retiring from the fisheries upon transfer.

#### **5. Appeals Process Under the Moratorium**

The Council agrees with the Secretary's finding that such a program would result in unnecessary duplication of costs, and perhaps result in violation of National Standard 7. The Council's revised moratorium proposes using the existing appeals procedure.

## 6. Potential Effects of Having No Moratorium

The 4,144 vessels allowed under the revised moratorium still exceed the annual average of 2,308 vessels that participated in the fisheries in the past 3 years. This may seem large, but it really is not when compared with the number of vessels that would be allowed to participate in the absence of a moratorium. How many more vessels might enter the fisheries if there is no moratorium? The EA Data indicated that 15,709 unique vessels have participated in the groundfish, crab, and halibut fisheries since 1978. An additional 20,000+ vessels participated in salmon, herring, and other shellfish fisheries managed by the State of Alaska. In all, over 35,000 vessels have participated in the fisheries off the coast of Alaska since 1978.

Potential future entrants into Council-managed fisheries, however, are not limited just to those vessels which have fished previously in Alaska. Under the status quo open access, any vessel with 50 percent U.S. ownership may enter the fisheries. U.S. Coast Guard (USCG) vessel documentation files show that over 232,000 vessels are currently documented.<sup>4</sup> USCG documentation is required for any vessel greater than 5 net tons (roughly 35 ft (10.7 m) LOA). Approximately 50 percent of these are documented as recreational vessels. The remaining 100,000+ vessels are documented either for coast-wise trade or as fishing vessels and are potential entrants into the fisheries. Additionally, there are over 11 million vessels less than 5 net tons documented as "Motor Boats." If only 1 percent of these are considered fishing vessels (in Alaska 15 percent of "motor boats" are fishing vessels), then 110,000 more vessels are potential entrants in the North Pacific groundfish and crab fisheries.

In summary, the revised moratorium would result in a potential fleet of 4,144 vessels, about 1,800 more than the current participant fleet. This 1,800 vessel difference and the effects of the minor number of crab vessels that may move into the cod fisheries, pale in significance to the estimated 245,000 existing U.S. vessels which could potentially enter the fisheries from elsewhere if no moratorium is approved. Finally, as industry has testified repeatedly, the Council's action on the moratorium has essentially frozen investments in the construction of new fishing vessels. Eliminating the moratorium now could lead to a renewed surge of investment in fishing vessels, all of which could enter the groundfish and crab fisheries of the North Pacific.

## 7. National Goals and Policies on Need to Address Overcapitalization

The Secretary's disapproval of the Council's moratorium appears to run counter to the Administration's own professed goals and objectives concerning the need to address overcapitalization in United States fisheries. These goals and objectives can be pieced together from various budget and policy statements, and from presentations made by representatives of the Department of Commerce.

NMFS has developed a "Strategic Plan for the Conservation and Wise Use of America's Living Marine Resources." Overcapitalization is identified as a key issue of national concern by NMFS in their report, "Our Living Oceans, Report of the Status of U.S. Living Marine Resources, 1992." The report states: "Many of our fisheries, including both overutilized and fully utilized stocks, are overcapitalized. . . . Such overcapitalization is a major factor contributing to overutilization of a resource. Where fisheries are overcapitalized and performing poorly economically, short-term economic concerns tend to be given undue weight relative to the steps necessary to achieve the long-term biological and economic potential. The excess capital may maintain pressure to increase catch limits beyond potential yield levels, depleting the resource, and once depleted, preventing its recovery. Many of the other issues discussed in this report are aggravated by overcapitalization. For example, when there is an excess number of boats, fish allocation problems are exacerbated."<sup>5</sup>

NMFS' Strategic Plan calls for, among other things, ". . . risk-averse decisions in the face of uncertainty (i.e., decisions erring on the side of conservation, not resource depletion); . . . [and] controlled access to fisheries to reduce the tendency toward excess fishing capacity, economic waste, conflicts between user

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Millilo, S., U.S.C.G. Personal Communication. 10/1994

NOAA, " Our Living Oceans: Report on the Status of U.S. Living Marine Resources," December 1992, NOAA Tech. Memo, NMFS-F/SPO-2, p. 17.

groups, and industry pressure to make 'risk-prone' decisions. . . ."6 Many of these same themes are emphasized again in the 1993 edition of "Our Living Resources" from NOAA.<sup>7</sup>

NOAA's budget documents for FY 1995 describe its Strategic Plan and organizes NOAA's program responsibilities into two broad program portfolios -- Environmental Stewardship and Environmental Assessment and Prediction, and two other portfolios -- Cross-Cut Programs and Infrastructure. Building sustainable fisheries is a major goal under the Environmental Stewardship Portfolio. NOAA states that it ". . . envisions United States coastal areas with healthy ecosystems, wise human development, and safe and efficient maritime commerce. Investments in living marine resources management are critical aspects of this portfolio. Significant benefits will accrue from wise management and use of fishery resources. . . . In FY 1995, NOAA will emphasize meeting Administration commitments to implement conservation and management laws. In FY 1995, \$544.3 million are required to meet these commitments. This is comprised of \$258.8 million to Build Sustainable Fisheries . . . ." NOAA then states that in FY 1995, its ". . . efforts to **build sustainable fisheries** (original emphasis) will emphasize developing and implementing ambitious fishery management plans to address such problems as **uncontrolled access in fisheries, overcapitalization** (emphasis added), overfishing, controversial allocation decisions between various fishing groups, and wasteful incidental catch."<sup>8</sup> These same themes are re-emphasized in NMFS/NOAA budget requests for FY 1996.

In a keynote address before the National Coalition for Marine Conservation's National Symposium on the Magnuson Act, March 8-10, 1993, Dr. William Fox, ex-Director of NMFS, stated that ". . . we must deal with Garrett Hardin's 'Tragedy of the Commons.' The way to do this is through controlling access to fisheries. The Councils are increasingly utilizing this important tool to rebuild fisheries and expand economic benefits. Where appropriate, we have urged the fishing industry and Councils to consider access-control programs to conserve the resources and reduce excess investment capital. Reducing excess capital generally improves the profitability of a fishery, creates jobs in the economy, and defuses the forces that lead to overfishing."<sup>9</sup>

At a June 1994 conference on Fisheries Management - Global Trends, Rolland Schmitt, Director of NMFS, stated in his opening remarks that "The U.S. is fortunate to have large and diverse fishery resources throughout its EEZ of over 2 million square miles. But these valuable assets come with responsibility for conservation and wise use. As a nation, the U.S. can do better in fulfilling these responsibilities. Three specific problems that require attention are overfishing and **over-capitalization** (emphasis added), bycatch that results in wasteful discarding of fish, and habitat loss and environmental degradation that threatens the persistence of fisheries."<sup>10</sup>

Dr. Michael Sissenwine, Chief Scientist for NMFS, at the same conference, said that ". . . the legacy of open access, risk prone decisions and limitations in available scientific information is over-utilization and stock depletion for many fisheries (about 40 percent) . . . . Crude estimates indicate that U.S. harvesting capacity is more than twice the amount needed to fully utilize U.S. fishery resources. The economic performance of some fisheries is so poor that the Government is being called on to provide financial assistance . . . ." (Note: On March 30, 1994, the President designated \$30,000,000 from the earthquake supplemental unanticipated needs account for emergency assistance for the New England fishing industry and on May 26, \$12,000,000 was designated under Section 9135 of Public Law 102-396

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Ibid, p. 23.

NOAA. "Our Living Oceans: Report on the Status of U.S. Living Marine Resources," December 1993, NOAA Tech. Memo, NMFS-F/SPO-15.

NOAA, Summary of the President's Budget, Fiscal Year 1995, February 7, 1994, p. 9.

National Coalition for Marine Conservation, Inc., "Conserving America's Fisheries: Proceedings of a National Symposium on the Magnuson Act," New Orleans, Louisiana, March 8-10, 1993, Richard H. Stroud, Editor, 1994.

University of Washington, Seattle, Conference on Fisheries Management - Global Trends, June 14-16, 1994.

to provide assistance to fishermen in the States of Washington, Oregon, and California.)<sup>11</sup>

At the same conference, Steve Pennoyer, NMFS' Alaska Regional Director, went on to state that "The current open access management of the Alaska groundfish fisheries contributes to bycatch amounts that are greater than what is minimally needed to conduct the groundfish fisheries. Similarly, efforts to control bycatch are hampered by the intense competition for Alaska groundfish resources that result from over capitalization of the domestic groundfish fleet and increasingly short fishing seasons."

At a more recent symposium, October 27-28, 1994, Rolland Schmitt, Director, NMFS, stated that NOAA will strive for sustainable development of marine fisheries.<sup>12</sup> He noted that recent FAO reports show that worldwide costs of fishing exceed the returns and concluded that there were few if any other fisheries in world for overcapitalized fleets to turn to. Building sustainable fisheries, risk-averse management, and addressing overcapitalization were high on his list of priorities in the next few years.

These policy statements and goals indicate that NMFS and NOAA recognize a strong need to address overcapitalization and to bring fisheries under control before the government needs to spend millions of dollars on emergency economic aid to devastated areas. As will be discussed below, the moratorium is the first of a progression of steps to address overcapitalization in North Pacific groundfish and crab fisheries and thus comprehensively rationalize those fisheries for the benefit of the nation.

## 8. Moratorium Goal

The original analysis on which the Council based its decision in June 1992 states very clearly that "Under conditions of continued open access, it is anticipated that the industry and management problems will continue to build, threatening the ability of the Council to achieve optimum yield (OY) in the affected fisheries, from economic, biological and social perspectives. Thus, the Council is faced with a two-fold dilemma: (1) Stemming the flow of additional, unneeded vessels and capital investment into the North Pacific EEZ fisheries; and (2) addressing the existent and emerging problems resulting from an overcapitalized fishing industry. The proposed moratorium is intended to address the first issue, stemming the flow of additional vessels and capitalization into Council-managed fisheries."<sup>13</sup>

The Council explained how the proposed moratorium relates to its comprehensive goals adopted in 1984, particularly goals 2, 3, 4, 5, and 7. It goes on to state on p. 1-13, that ". . . the Council's objective in this proposed amendment is to freeze the size of the current fleet and prevent speculative increases in capacity during the period that comprehensive limited access alternatives are being considered. While recognizing that overcapitalization and excess capacity are the underlying problems, the Council's near term actions are not expected to resolve these issues, so much as prevent a worsening of the situation." As summed up in Chairman Lauber's moratorium transmittal letter to the Secretary, dated May 23, 1994: "The Council recognizes that the moratorium is only a holding action in a larger effort to stabilize and then reduce the flow of capacity into the fisheries off Alaska. The next steps toward full rationalization could include a license or individual fishing quota system, or a progression from licenses to IFQs over several years. . . . Regardless of which system is ultimately chosen to rationalize the fisheries, the Council believes that the moratorium and its associated control dates must be implemented as soon as possible."

The Secretarial disapproval letter agreed with this objective, stating that ". . . there is a need to provide an interim freezing of the number of vessels currently involved in the groundfish and crab fisheries. Any other management regime that will effectively resolve overcapacity problems in the fishing industry, if approved, is still years away from implementation."

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Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, FY 1995 and Supplemental Appropriations Bill, FY 1994, Report 103-552, June 21, 1994.

University of Washington, Conference accompanying the 75th Anniversary of the School of Fisheries, Seattle, October 27-18, 1994.

North Pacific Fishery Management Council, Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for the proposed moratorium on the entry of New Vessels into the Groundfish, Crab, and Halibut Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Islands, April 28, 1994.

This direction is completely in line with the Administration's stated need to address overcapitalization. North Pacific fisheries have been managed very prudently and are still abundant compared to fisheries in other parts of the United States. Large scale fisheries are now defunct off New England and the Pacific Coast, and others already are under limited entry. Many vessel owners will be searching for other opportunities, particularly the abundant fisheries off Alaska. Earlier in this analysis, it was shown that potentially 245,000 existing vessels could take the opportunity to fish for the first time on groundfish and crab if there is no moratorium. Not placing a moratorium on new entrants, and thus risking extreme overcapitalization and pulse fishing of Alaska groundfish and crab fisheries, seem to fly in the face of the risk-averse policies espoused by the current Administration and its stated goals and objectives. The moratorium as now proposed by the Council, with the revisions made based on the Secretary's advice, appears to be consistent with the National Goals and Policies of the Administration as well as the short term goals of the Council.

## 9. National Standards

**National Standard 1.** The Secretary's disapproval letter states that it is unclear how crossovers and the longer qualifying period in the Council's earlier proposed moratorium would enhance the achievement of optimum yield from the groundfish and crab fisheries. Nor is it apparent, the Secretary opines, how the OY from the groundfish and crab fisheries would be achieved better under the proposed moratorium, as compared to the status quo alternative. Therefore, he found the proposed moratorium inconsistent with National Standard 1.

The Magnuson Act in Section 301(a) requires any fishery management plan to be consistent with the national standards. National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the U.S. fishing industry. OY is defined in the Council's groundfish plans as a range of harvest from the stocks. In setting that range, the Council (and the Secretary) has taken into account biological, economic, and social considerations. The moratorium will neither improve nor degrade achievement of OY or the harvest of that range. However, it will allow the OY to be harvested. Therefore, the Council believes it is consistent with National Standard 1.

NOAA/NMFS's own guidelines describe National Standard 1 as more of a conservation standard, not one that emphasizes allocational issues.<sup>14</sup> The conservation aspects of National Standard 1 are emphasized not only in the 1989 revisions to the guidelines, but also in earlier guidelines described in Appendix A to Subpart B - Explanatory Material, which says that "NOAA believes it important to keep the distinction clear between the two separate parts of Standard 1: To prevent overfishing, and to achieve OY. The guidelines are written such that overfishing is an intrinsic limitation on OY; it is built into the OY determination, yet maintains a separate identity as a constraint." With regard to achieving OY, the guidelines state that ". . . National Standard 1 is violated whenever the level of harvest is consistently and significantly different from OY, irrespective of whether that harvest level is above or below OY. While recognizing that OY might not be achieved every year in practice, NOAA believes that Councils must make every reasonable attempt to see that it is."

Nothing in the guidelines speaks to "how well" the OY is achieved other than whether it was exceeded or not fully harvested. Once the OY is determined, the Council believes that any change to a plan is consistent as long as OY can be achieved. As stated above, the Council's moratorium does not detract from the ability to achieve OY in the groundfish or crab fisheries. On the other hand, not approving the moratorium would provide for an increased probability of pulse increases in effort that could cause overfishing. The Council has maintained harvest levels within the OY range through the use of TACs. The Council also has overfishing definitions in each plan and maintains harvest levels so that overfishing does not occur. It is very difficult to see how the moratorium could be construed to violate National Standard 1. Further, such a determination does not comport with any of the guidelines offered by the Secretary concerning that national standard. While the Council believes that the originally proposed moratorium was consistent with National Standard 1, the revised moratorium submitted herein should certainly alleviate any concerns regarding that consistency.

**National Standard 4.** The Secretary concludes that the moratorium violates National Standard 4. That standard requires any allocation of fishing privileges under an FMP to not discriminate between residents of different states, to be fair and equitable, reasonably calculated to promote conservation, and carried out in such manner that no particular entity acquires an excessive share of such privileges. The Secretary states that the moratorium violates National Standard 4 because it is not rationally connected with the achievement of OY, and indeed would frustrate the achievement of OY, and that it does not further a legitimate FMP objective. As argued above, the Council believes that the OY as defined in the FMPs will be achieved whether or not there is a moratorium. If there is a potential not to achieve OY, it results more from the Secretary's decision not to limit effort in the fishery and thus risk overfishing. The Council's decision to at least bound effort and not open the fishery to an as yet unknown pulse intrusion from other areas of the U.S. comports well with the tenets of risk-averse management embraced by the Administration. A Secretarial decision to leave the fisheries open, and thus vulnerable to all comers, does not.

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NOAA/NMFS Guidelines for Fishery Management Plans; Final Rule, 50 CFR Part 602, July 24, 1989.

Concerning furtherance of plan objectives, the original analysis of the moratorium found that the moratorium does further the objectives and the Council's comprehensive goals, particularly 2-5, and 7 which deal with the well being of the fisheries and industry. All these goals help guide Council management. The goals and objectives from the GOA groundfish plan are illustrative. The first goal is to conform to the National Standards and to the Council's Comprehensive Fishery Management Goals. A key objective, very germane to this discussion, is that the Council will develop measures to control effort in a fishery, including systems to convert the common property resource to private property, but only when requested to do so by industry. The Council is moving toward attainment of that goal, with the moratorium as the first step, with the full support of the industry.

And finally, the Secretary's own guidelines appear not to address limited entry measures such as the proposed moratorium under National Standard 4. The Secretary states clearly in his pre-1989 guidelines that "NOAA chose to address the questions surrounding "limited access" in the context of Standard 5 rather than in Standard 4 (emphasis added), even though limited access, by its nature, is an allocative measure. . . . [T]he guidelines caution that any limited access system must be consistent with section 303(b)(6) of the Act and the Standard 4 guidelines [,but] NOAA believes that placement within Standard 5 puts the emphasis more appropriately on concepts of economic efficiency in achieving OY rather than on the contentious issues of right of entry, or limit on effort, per se. The placing of limited access within the Standard 5 context does not imply, however, that efficiency is always attained by limited access, nor that limited access is the most desirable method of attaining efficiency, nor that efficiency is the only purpose for limited access, nor that limited entry has always resulted in the benefits listed in the guidelines."

Even the 1989 guidelines treat limited entry more in context of National Standard 5, and suggest that the moratorium should be judged on the basis of whether it is consistent with Standard 5 rather than with Standard 4. There is, however, no reason to believe that it is not consistent with Standard 4. From its very makeup, it does not exclude anyone from one state in particular, no one gets an excessive share, it does more to promote conservation than no moratorium, and because it is based on a minimum of one landing during a prescribed period, it is fair and equitable to all such fishermen who meet that qualification. If the Secretary accepts that all other elements of the revised moratorium are consistent with the various dimensions of National Standard 4 as identified above, it is very difficult to see how the crossover provision alone would lead to a determination of inconsistency. Nevertheless, the Council's revised moratorium submitted herein deals directly with the crossover issue in question in a manner which responds directly to the concerns expressed by the Secretary.

**National Standard 5.** The Secretary states that allowing an increase in capacity in any one of the over-subscribed fisheries does not promote efficiency mainly due to the crossover provision and the long qualifying period. The Council responded by shortening the qualifying period, eliminating fixed gear sablefish and halibut as qualifying fisheries, and by substantially restricting crossover potential under the moratorium. As noted in the Secretary's own guidelines, limited access does not necessarily have to increase efficiency, nor does efficiency have to be the only purpose addressed by limited access. As the Council clearly stated, the moratorium was not meant to clear up all the problems in the fisheries. It is a holding action while the Council addresses the very complex and numerous issues attendant to developing a longer term comprehensive solution to overcapitalization. As noted above, the Secretary agreed with this aim.

It certainly cannot be argued that having no moratorium will provide for a more efficient fishery. When the NMFS disapproved the halibut moratorium in 1983, it clearly did not lead to a more efficient fishery. It led to massive overcapitalization, seasons reduced to 24-hour derbies, and considerable dollars spent in addressing the issue over 12 years later. Another Secretarial disapproval of the Council's moratorium would seem to head the groundfish and crab fisheries in the same direction as the halibut fisheries, and that is not in the direction of more efficient fisheries as espoused in National Standard 5.

## 10. Summary and Conclusions

1. The Council approved revisions to its proposed moratorium in response to concerns raised by the Secretary. As requested by the Secretary, the Council (1) shortened the qualifying period from the original January 1, 1980 to February 9, 1992, to the revised January 1, 1988 to February 9, 1992; (2) eliminated halibut and sablefish fixed gear fisheries because they will be managed with IFQs beginning in 1995; (3) restricted crossovers from groundfish to crab fisheries and vice-versa, as well as restricted crossovers between groundfish gear types; (4) considered current participation in 1992-1994, but did not

extend the February 9, 1992 cutoff date; and (5) revised the appeals process to be the same as for the sablefish and halibut IFQ program. As originally proposed, the moratorium will sunset 3 years from the effective date.

2. The Council's revisions reduce the potential fleet size from 13,350 vessels under the original moratorium to 4,144 vessels under the revised moratorium. Of the 4,144 qualified vessels, 255 qualified based on crab landings only, 231 based on crab and groundfish, and 3,658 based on groundfish only. Recognition of crossovers will be limited to those which have occurred in the two and one-half years which have passed since Council approval of the original moratorium. Limits on upgrades in vessel size were retained from the original moratorium. The number of qualifying vessels is about 180 percent of the average number of vessels, 2,308 unique vessels, which operated each year 1988 through 1991 in the groundfish and crab fisheries.

3. By not extending the February 9, 1992, cutoff date to 1994, the Council eliminated 494 vessels which entered the fisheries for the first time, since February 9, 1992. Another 479 vessels were not new to the fisheries, but were disqualified on the basis of the Secretary's other requested revisions to the moratorium: the shortening of the qualification period and the elimination of halibut and sablefish fixed gear landings as qualifying criteria. The 973 vessels that were eliminated by these combined actions could have added substantial new capacity to the moratorium fisheries.

4. Crossovers between groundfish and crab fisheries are limited by the Council's revisions. Halibut and sablefish crossovers into groundfish and crab were eliminated, thus significantly reducing the problem. Crossovers between groundfish and crab fisheries, and vice-versa, were limited based



on gear type or activity of the vessel during the secondary period of February 10, 1992 to December 11, 1994. Instead of 3,340 groundfish vessels having the opportunity to cross over into crab fisheries, there are now a maximum of 284 which could do so. The number of crab vessels which could cross over into groundfish has not changed, but is limited to only pot gear, unless the vessel also made groundfish landings with other gear types. The maximum number of crab vessels which could cross over, which have not already done so, is 179. The Council is comfortable with creating these limited crossover allowances. First, because crab abundance has declined recently and lucrative fisheries such as Bristol Bay red king crab have been closed, there will be little economic sense for groundfish vessels to invest in crab gear, especially in light of the fact that June 24, 1992 still is a prominent cutoff date for fishing histories for future limited entry (license limitation or IFQs). Second, though the more likely scenario is that some of the 179 crab vessels might gear up for groundfish, the June 24, 1992 cutoff date still serves as a deterrent to any major new investment. None of the options currently being considered by the Council for license limitation would recognize crossovers which occur during the moratorium years of 1995-1997.

5. Those crabbers that do cross over most likely will participate in pot fisheries for Pacific cod. In doing so, the main impacts of increased capacity will be felt by the fixed gear portion of the Bering Sea cod fishery, or in the inshore cod fisheries in the GOA. Two mitigating factors of these focused crossovers are that (1) pot fisheries have been shown to be relatively clean fisheries in terms of bycatch, and (2) the Pacific cod resource is very abundant and 1995 quotas are higher than 1994.

6. The impacts of the Secretary disapproving the Council's revised moratorium could be devastating and certainly would not be risk averse. The analysis shows that about 245,000 vessels potentially could enter the groundfish and crab fisheries off Alaska. The impacts of the 1800-vessel difference between the moratorium fleet and the current participant fleet, and the minor number of crab vessels that may crossover into the cod fisheries, pale in significance compared to the impacts that would result from a pulse influx of vessels from distressed areas and fisheries elsewhere in the United States if no moratorium is in place.

7. Written and verbal policy statements by representatives of the Secretary identify risk-prone management and overcapitalization as priority concerns in fisheries around the nation. If by disapproving the Council's revised moratorium, the Secretary chooses open access to North Pacific fisheries over a limitation on potential capitalization, that decision could lead to pulse influxes of effort and a heightened potential for overfishing. Such a decision would run counter to the Secretary's stated goals of risk-averse management and reduced effort. Such a decision would show that little has been learned from the current emergency need to expend almost \$50,000,000 on aid to New England and the Pacific Coast now because of resource failures.

8. The Council believes the moratorium will achieve its short term goal of stemming the flow of outside capacity into North Pacific crab and groundfish fisheries, thus keeping the situation from worsening while a longer term comprehensive rationalization plan is developed. The Secretary also has accepted that goal for the moratorium. The Council believes the moratorium comports with its comprehensive fishery management goals and those in the fishery management plans.

9. The Council believes the moratorium is consistent with all the national standards including numbers 1, 4, and 5 which were the basis for the Secretary's earlier disapproval. The moratorium will in no way degrade the ability to achieve OY, it does not discriminate between residents of different states, it is fair and equitable and will promote conservation, and it will not allow efficiency to be degraded by a large influx of new capacity. A decision to not implement a moratorium would act in the reverse direction: It could lead to exceeding OY and overfishing, it does not promote conservation, and it will degrade efficiency as new effort enters the fisheries. That choice clearly is not consistent with the National Standards.

#### IV. FINDING OF NO SIGNIFICANT IMPACT

For the reasons stated above, neither implementation of the status quo nor any of the alternatives would significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by section 102(2)(c) of the National Environmental Policy Act or its implementing regulations. Any of the proposed moratorium alternatives contained in this amendment would likely lessen the effects of the commercial fisheries off Alaska on the quality of

the human environment, as compared to the status quo alternative.

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Assistant Administrator for Fisheries

Date

V. LIST OF PREPARERS

See section 6.0 of the draft EA/RIR/IRFA dated April 28, 1994.

VI. LIST OF AGENCIES AND ORGANIZATIONS CONSULTED

See section 7.0 of the draft EA/RIR/IRFA dated April 28, 1994.

**Plan Amendment Language for the Moratorium of Vessels Entering The Groundfish Fisheries in the Bering Sea/Aleutian Islands**

*To be added at end of Chapter 2.0.*

Amendment 23, effective (*insert the effective date of the moratorium*):

Created a moratorium on harvesting vessels entering the BSAI groundfish fisheries other than fixed gear sablefish after (*insert the effective date of the moratorium*). The vessel moratorium will last until the Council replaces or rescinds the action, but in any case will end on (*insert date three years after the effective date of the moratorium*). The Council may however extend the moratorium up to 2 additional years, if a permanent limited access program is imminent.

*A new Section 14.4.7.2 titled "Moratorium on Vessels Entering the Fisheries" would be added and would read as follows:*

14.4.7.2 Moratorium on Vessels Entering the Fisheries

Beginning on (*insert the effective date of the moratorium*) a moratorium on new harvesting vessels (including harvester/processors) entering the BSAI groundfish fisheries, other than fixed gear sablefish, is in effect. Vessels fishing in State waters will be exempt. The vessel moratorium will last until the Council replaces or rescinds the action, but in any case will end on (*insert date three years after the effective date of the moratorium*). The Council may however extend the moratorium up to 2 additional years, if a permanent limited access program is imminent.

14.4.7.2.1 Elements of the Moratorium

1. Qualifying Period. In order to qualify, a harvesting vessel must have made a reported landing in one of the designated moratorium fisheries during the period beginning January 1, 1988, and ending February 9, 1992, including landings of moratorium species from State waters. Moratorium species are those managed under Council FMPs and include groundfish (other than fixed gear sablefish) in the BSAI and GOA and BSAI king and Tanner crab.
2. Eligible Fisheries. If a vessel qualifies based on Item 1 above, the following provisions apply:
  - a. A vessel that made a qualifying landing in the BSAI or GOA groundfish fisheries would be eligible to participate in the BSAI groundfish fisheries under the moratorium.
  - b. A vessel that made a qualifying landing in the BSAI crab fisheries would be eligible to participate in the BSAI crab fisheries AND the BSAI groundfish fisheries under the moratorium providing:
    - (1) it uses only the same fishing gear in the groundfish fisheries that it used in the BSAI crab fisheries to qualify for the moratorium, and
    - (2) it does not use any fishing gear prohibited in the BSAI or GOA groundfish fisheries.
  - c. A vessel that made a qualifying landing in the BSAI crab fisheries, and during the period February 9, 1992, through December 11, 1994, made a landing in the BSAI or GOA groundfish fisheries would be eligible to continue to participate in the BSAI groundfish fisheries under the moratorium using the gear with which the groundfish landing was made.
3. Length Increases During the Moratorium: The 20% Rule.

Moratorium qualified vessels will be limited to a 20% increase in length overall (LOA) as long as the increase does not result in a vessel greater than 125 ft LOA. The 20% increase will be based on the LOA of the original qualified vessel, even in cases of multiple transfers/replacements. Vessels over 125 ft LOA may not be lengthened under any circumstance.

4. Reconstruction of Vessels During the Moratorium. An eligible vessel that is reconstructed during the moratorium retains its privilege to participate in all fisheries under the Council's jurisdiction subject to the following provisions: (1) If reconstruction is completed prior to June 24, 1992, the new size is unrestricted and length increases subject to the 20% Rule discussed above are allowed between June 24, 1992 and the end of the moratorium. (2) If reconstruction began prior to June 24, 1992 but was not completed until after that date, the new size would be unrestricted but no more length increases would be allowed. (3) If reconstruction commences on or after June 24, 1992, increases in length may not exceed the 20% Rule. (4) Other types of vessel reconstructions or upgrades may occur as long as they do not result in the lengthening of a vessel.
5. Replacement of Vessels During the Moratorium. During the moratorium, qualifying vessels can be replaced with non-qualifying vessels so long as the replaced vessel leaves the fishery. Though multiple or sequential replacements are allowed, vessel length can only be increased subject to the 20% Rule. In the case of existing qualified vessels over 125 ft LOA, the replacement vessel cannot exceed the length of the original vessel. In the event of a combined replacement/reconstruction, increases in LOA may not exceed the 20% Rule.
6. Replacement of Vessels Lost or Destroyed On or After January 1, 1989 But Before *(insert the effective date of the moratorium)*. Vessels lost or destroyed on or after January 1, 1989 may be replaced provided the following conditions are met. (1) The LOA of the replacement vessel does not exceed the 20% rule. (2) The replacement vessel must make a landing in a moratorium fishery prior to *(insert a date two years after the effective date of the moratorium)* to remain a qualified vessel. The replaced vessel would no longer be a moratorium qualified vessel.
7. Replacement of Vessels Lost or Destroyed After *(insert the effective date of the moratorium)*. Vessels lost or destroyed after *(insert the effective date of the moratorium)* may be replaced subject to the 20% Rule and the replaced vessel would no longer be a moratorium qualified vessel.
8. Salvage of Vessels Lost or Destroyed On or After January 1, 1989. A moratorium qualified vessel lost or destroyed between January 1, 1989 and the end of the moratorium may be salvaged and will be considered a moratorium qualified vessel, as long as it has not already been replaced, as per item 5 above.
9. Salvage of Vessels Lost or Destroyed Before January 1, 1989. A moratorium qualified vessel lost or destroyed before January 1, 1989 may not be replaced. The lost or destroyed vessel may be salvaged and become moratorium qualified if it meets the following two conditions: (1) Salvage operations must have been ongoing as of June 24, 1992. (2) The salvaged vessel must make a landing in a moratorium fishery prior to *(insert a date two years after the effective date of the moratorium)*.

10. Small Vessel Exemptions. Vessels 32 ft or less LOA would be exempted from the moratorium in the Bering Sea and Aleutian Islands.
11. Disadvantaged Communities. New vessels constructed after implementation of Community Development Quota (CDQ) programs, pursuant to an approved CDQ project, will be exempt from the moratorium. In order to qualify for such exemption the vessel must: (1) be constructed solely for the purpose of furthering the goals of a community CDQ project, and (2) be a specialized vessel designed and equipped to meet the needs of a community or group of communities that have specific and unique operating requirements. Such exemptions would be limited to vessels 125 ft LOA and under. These vessels may fish in both CDQ and non-CDQ fisheries. Vessels built pursuant to a CDQ project under this exemption that are transferred to a non-CDQ entity during the life of the moratorium may not be considered eligible under the moratorium.
12. Halibut and Sablefish Fixed Gear Vessels. Halibut and sablefish fixed gear vessels operating under the provisions of the proposed IFQ Amendment will be exempted from the vessel moratorium as it affects directed halibut and sablefish operations. Such an exemption becomes effective at the time of implementation of the IFQ program. Non-qualifying vessels entering the halibut and sablefish fisheries under this exemption may not participate in any other directed fisheries under the Council's authority. If the total retained catch of species other than halibut and sablefish exceeds 20% of the total weight of all species of fish on board, then the vessel must be a moratorium-qualified vessel.
13. Transfer of Moratorium Rights. It shall be assumed that any transfer of vessel ownership includes a transfer of moratorium fishing rights. Moratorium rights may however be transferred without a transfer of ownership of the original qualifying vessel or any subsequently qualified vessel. The recipient of such transfers of rights will bear the burden of proof for moratorium qualification. Transfers of moratorium rights may not be used to circumvent the 20% Rule. Moratorium permits may be transferred only in their entirety; i.e., species or gear endorsements may not be separated and transferred independently.

**Plan Amendment Language for the Moratorium of Vessels Entering The Groundfish Fisheries in the Gulf of Alaska**

*A new Section 4.4.1.2 titled "Moratorium on Vessels Entering the Fisheries" would be added and would read as follows:*

**4.4.1.2 Moratorium on Vessels Entering the Fisheries**

Beginning on *(insert the effective date of the moratorium)* a moratorium on harvesting vessels (including harvester/processors) entering the GOA groundfish fisheries, other than fixed gear sablefish, is in effect. Vessels fishing in State waters will be exempt. The vessel moratorium will last until the Council replaces or rescinds the action, but in any case will end on *(insert date three years after the effective date of the moratorium)*. The Council may however extend the moratorium up to 2 additional years, if a permanent limited access program is imminent.

#### 4.4.1.2.1 Elements of the Moratorium

2. Qualifying Period. In order to qualify, a harvesting vessel must have made a reported landing in one of the designated moratorium fisheries during the period beginning January 1, 1988, and ending February 9, 1992, including landings of moratorium species from State waters. Moratorium species are those managed under Council FMPs and include groundfish (other than fixed gear sablefish) in the BSAI and GOA and BSAI king and Tanner crab.
3. Eligible Fisheries. If a vessel qualifies based on Item 1 above, the following provisions apply:
  - a. A vessel that made a qualifying landing in the BSAI or GOA groundfish fisheries would be eligible to participate in the GOA groundfish fisheries under the moratorium.
  - b. A vessel that made a qualifying landing in the BSAI crab fisheries would be eligible to participate in the BSAI crab fisheries AND the GOA groundfish fisheries under the moratorium providing:
    - (1) it uses only the same fishing gear in the groundfish fisheries that it used in the BSAI crab fisheries to qualify for the moratorium, and
    - (2) it does not use any fishing gear prohibited in the BSAI or GOA groundfish fisheries.
  - c. A vessel that made a qualifying landing in the BSAI crab fisheries, and during the period February 9, 1992, through December 11, 1994, made a landing in the BSAI or GOA groundfish fisheries would be eligible to continue to participate in the GOA groundfish fisheries under the moratorium using the gear with which the groundfish landing was made.
4. Length Increases During the Moratorium: The 20% Rule. Moratorium qualified vessels will be limited to a 20% increase in length overall (LOA) as long as the increase does not result in a vessel greater than 125 ft LOA. The 20% increase will be based on the LOA of the original qualified vessel. Vessels over 125 ft LOA may not be lengthened under any circumstance.
5. Reconstruction of Vessels During the Moratorium. An eligible vessel that is reconstructed during the moratorium retains its privilege to participate in all fisheries under the Council's jurisdiction subject to the following provisions: (1) If reconstruction is completed prior to June 24, 1992, the new size is unrestricted and length increases subject to the 20% Rule discussed above are allowed between June 24, 1992 and the end of the moratorium. (2) If reconstruction began prior to June 24, 1992 but was not completed until after that date, the new size would be unrestricted but no more length increases would be allowed. (3) If reconstruction commences on or after June 24, 1992, increases in length may not exceed the 20% Rule. (4) Other types of vessel reconstructions or upgrades may occur as long as they do not result in the lengthening of a vessel.
6. Replacement of Vessels During the Moratorium. During the moratorium, qualifying vessels can be replaced with non-qualifying vessels so long as the replaced vessel leaves the fishery. Though multiple or sequential replacements are allowed, vessel length can only be increased subject to the 20% Rule. In the case of existing

qualified vessels over 125 ft LOA, the replacement vessel cannot exceed the length of the original vessel. In the event of a combined replacement/reconstruction, increases in LOA may not exceed the 20% Rule.

7. Replacement of Vessels Lost or Destroyed On or After January 1, 1989 But Before *(insert the effective date of the moratorium)*. Vessels lost or destroyed on or after January 1, 1989 may be replaced provided the following conditions are met. (1) The LOA of the replacement vessel does not exceed the 20% Rule. (2) The replacement vessel must make a landing in a moratorium fishery prior to *(insert a date two years after the effective date of the moratorium)* to remain a qualified vessel. The replaced vessel would no longer be a moratorium qualified vessel.
8. Replacement of Vessels Lost or Destroyed After *(insert the effective date of the moratorium)*. Vessels lost or destroyed after *(insert the effective date of the moratorium)* may be replaced subject to the 20% Rule and the replaced vessel would no longer be a moratorium qualified vessel.
9. Salvage of Vessels Lost or Destroyed On or After January 1, 1989. A moratorium qualified vessel lost or destroyed between January 1, 1989 and the end of the moratorium may be salvaged and will be considered a moratorium qualified vessel, as long as it has not already been replaced, as per item 5 above.
10. Salvage of Vessels Lost or Destroyed Before January 1, 1989. A moratorium qualified vessel lost or destroyed before January 1, 1989 may not be replaced. The lost or destroyed vessel may be salvaged and become moratorium qualified if it meets the following two conditions: (1) Salvage operations must have been ongoing as of June 24, 1992. (2) The salvaged vessel must make a landing in a moratorium fishery prior to *(insert a date two years after the effective date of the moratorium)*.
11. Small Vessel Exemptions. Vessels 26 ft or less LOA would be exempted from the moratorium in the Gulf of Alaska.
12. Disadvantaged Communities. New vessels constructed after implementation of Community Development Quota (CDQ) programs, pursuant to an approved CDQ project, will be exempt from the moratorium. In order to qualify for such exemption the vessel must: (1) be constructed solely for the purpose of furthering the goals of a community CDQ project, and (2) be a specialized vessel designed and equipped to meet the needs of a community or group of communities that have specific and unique operating requirements. Such exemptions would be limited to vessels 125 ft LOA and under. These vessels may fish in both CDQ and non-CDQ fisheries. Vessels built pursuant to a CDQ project under this exemption that are transferred to a non-CDQ entity during the life of the moratorium may not be considered eligible under the moratorium.
13. Halibut and Sablefish Fixed Gear Vessels. Halibut and sablefish fixed gear vessels operating under the provisions of the proposed IFQ Amendment will be exempted from the vessel moratorium as it affects directed halibut and sablefish operations. Such an exemption becomes effective at the time of implementation of the IFQ program. Non-qualifying vessels entering the halibut and sablefish fisheries under this exemption may not participate in any other directed fisheries under the Council's authority. If the total retained catch of species other than halibut and sablefish exceeds 20% of the total weight of sablefish and halibut on board, then the vessel must be a moratorium-qualified vessel.

14. Transfer of Moratorium Rights. It shall be assumed that any transfer of vessel ownership includes a transfer of moratorium fishing rights. Moratorium rights may however be transferred without a transfer of ownership of the original qualifying vessel or any subsequently qualified vessel. The recipient of such transfers of rights will bear the burden of proof for moratorium qualification. Transfers of moratorium rights may not be used to circumvent the 20% Rule. Moratorium permits may be transferred only in their entirety; i.e., species or gear endorsements may not be separated and transferred independently.



## **Plan Amendment Language for the Moratorium on Vessels Entering The Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands**

*The first sentence in Section 8.1.2 would read:*

No Federal fishing permits are required for harvesting vessels, except as required by the Moratorium on new vessels entering the fishery as described in Section 8.1.4. and regulated by 50 CFR (insert part #).

*The paragraph contained in Section 8.1.4 would be deleted.*

*A new section 8.1.4.1 titled "Moratorium on Vessels Entering the Fisheries" would be added. and would read as follows:*

### **8.1.4.1 Moratorium on Vessels Entering the Fisheries**

Beginning on (insert the effective date of the moratorium) a moratorium on harvesting vessels (including harvester/processors) entering the BSAI King and Tanner Crab fisheries is in effect. Vessels fishing in State waters will be exempt. The vessel moratorium will last until the Council replaces or rescinds the action, but in any case will end on (insert date three years after the effective date of the moratorium). The Council may however extend the moratorium up to 2 additional years, if a permanent limited access program is imminent.

#### **8.1.4.1.1 Elements of the Moratorium**

15. **Qualifying Period.** In order to qualify, a harvesting vessel must have made a reported landing in one of the designated moratorium fisheries during the period beginning January 1, 1988, and ending February 9, 1992, including landings of moratorium species from State waters. Moratorium species are those managed under Council FMPs and include groundfish (other than fixed gear sablefish) in the BSAI and GOA and BSAI king and Tanner crab.
16. **Eligible Fisheries.** If a vessel qualifies based on Item 1 above, the following provisions apply:
  - a. A vessel that made a qualifying landing in the BSAI crab fisheries would be eligible to participate in the BSAI crab fisheries under the moratorium.
  - b. A vessel that made a qualifying landing in the BSAI or GOA groundfish fisheries would be eligible to participate in the BSAI/GOA groundfish fisheries AND the BSAI crab fisheries under the moratorium providing:
    - (1) it uses only the same fishing gear in the BSAI crab fisheries that it used in the groundfish fisheries to qualify for the moratorium, and
    - (2) it does not use any fishing gear prohibited in the BSAI crab fisheries.
  - c. A vessel that made a qualifying landing in the BSAI or GOA groundfish fisheries, and during the period February 9, 1992, through December 11, 1994, made a landing in the BSAI crab fisheries would be eligible to continue to participate in the BSAI crab fisheries under the moratorium using the gear with which the crab landing was made.
17. **Length Increases During the Moratorium: The 20% Rule.**

Moratorium qualified vessels will be limited to a 20% increase in length overall (LOA) as long as the increase does not result in a vessel greater than 125 ft LOA. The 20% increase will be based on the LOA of the original qualified vessel. Vessels over 125 ft LOA may not be lengthened under any circumstance.

18. Reconstruction of Vessels During the Moratorium. An eligible vessel that is reconstructed during the moratorium retains its privilege to participate in all fisheries under the Council's jurisdiction subject to the following provisions: (1) If reconstruction is completed prior to June 24, 1992, the new size is unrestricted and length increases subject to the 20% Rule discussed above are allowed between June 24, 1992 and the end of the moratorium. (2) If reconstruction began prior to June 24, 1992 but was not completed until after that date, the new size would be unrestricted but no more length increases would be allowed. (3) If reconstruction commences on or after June 24, 1992, increases in length may not exceed the 20% Rule. (4) Other types of vessel reconstructions or upgrades may occur as long as they do not result in the lengthening of a vessel.
19. Replacement of Vessels During the Moratorium. During the moratorium, qualifying vessels can be replaced with non-qualifying vessels so long as the replaced vessel leaves the fishery. Though multiple or sequential replacements are allowed, vessel length can only be increased subject to the 20% Rule. In the case of existing qualified vessels over 125 ft LOA, the replacement vessel cannot exceed the length of the original vessel. In the event of a combined replacement/reconstruction, increases in LOA may not exceed the 20% Rule.
20. Replacement of Vessels Lost or Destroyed On or After January 1, 1989 But Before *(insert the effective date of the moratorium)*. Vessels lost or destroyed on or after January 1, 1989 may be replaced provided the following conditions are met. (1) The LOA of the replacement vessel does not exceed the 20% rule. (2) The replacement vessel must make a landing in a moratorium fishery prior to *(insert a date two years after the effective date of the moratorium)* to remain a qualified vessel. The replaced vessel would no longer be a moratorium qualified vessel.
21. Replacement of Vessels Lost or Destroyed After *(insert the effective date of the moratorium)*. Vessels lost or destroyed after *(insert the effective date of the moratorium)* may be replaced subject to the 20% Rule and the replaced vessel would no longer be a moratorium qualified vessel.
22. Salvage of Vessels Lost or Destroyed On or After January 1, 1989. A moratorium qualified vessel lost or destroyed between January 1, 1989 and the end of the moratorium may be salvaged and will be considered a moratorium qualified vessel, as long as it has not already been replaced, as per item 5 above.
23. Salvage of Vessels Lost or Destroyed Before January 1, 1989. A moratorium qualified vessel lost or destroyed before January 1, 1989 may not be replaced. The lost or destroyed vessel may be salvaged and become moratorium qualified if it meets the following two conditions: (1) Salvage operations must have been ongoing as of June 24, 1992. (2) The salvaged vessel must make a landing in a moratorium fishery prior to *(insert a date two years after the effective date of the moratorium)*.

24. Small Vessel Exemptions. Vessels 32 ft or less LOA would be exempted from the moratorium in the Bering Sea and Aleutian Islands.
25. Disadvantaged Communities. New vessels constructed after implementation of Community Development Quota (CDQ) programs, pursuant to an approved CDQ project, will be exempt from the moratorium. In order to qualify for such exemption the vessel must: (1) be constructed solely for the purpose of furthering the goals of a community CDQ project, and (2) be a specialized vessel designed and equipped to meet the needs of a community or group of communities that have specific and unique operating requirements. Such exemptions would be limited to vessels 125 ft LOA and under. These vessels may fish in both CDQ and non-CDQ fisheries. Vessels built pursuant to a CDQ project under this exemption that are transferred to a non-CDQ entity during the life of the moratorium may not be considered eligible under the moratorium.
26. Halibut and Sablefish Fixed Gear Vessels. Halibut and sablefish fixed gear vessels operating under the provisions of the proposed IFQ Amendment will be exempted from the vessel moratorium as it affects directed halibut and sablefish operations. Such an exemption becomes effective at the time of implementation of the IFQ program. Non-qualifying vessels entering the halibut and sablefish fisheries under this exemption may not participate in any other directed fisheries under the Council's authority. If the total retained catch of species other than halibut and sablefish exceeds 20% of the total weight of all species of fish on board, then the vessel must be a moratorium-qualified vessel.
27. Transfer of Moratorium Rights. It shall be assumed that any transfer of vessel ownership includes a transfer of moratorium fishing rights. Moratorium rights may however be transferred without a transfer of ownership of the original qualifying vessel or any subsequently qualified vessel. The recipient of such transfers of rights will bear the burden of proof for moratorium qualification. Transfers of moratorium rights may not be used to circumvent the 20% Rule. Moratorium permits may be transferred only in their entirety; i.e., species or gear endorsements may not be separated and transferred independently.