

REGULATORY IMPACT REVIEW
FOR FISHERY MANAGEMENT PLAN AMENDMENTS EXTENDING THE
VESSEL MORATORIUM FOR THE GROUND FISH AND CRAB
FISHERIES IN AND OFF ALASKA

Prepared by

National Marine Fisheries Service
Alaska Regional Office

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Executive Summary

The temporary moratorium on the entry of vessels into the groundfish and crab fisheries under Federal jurisdiction in and off Alaska (Vessel Moratorium Program) was designed to be an interim step towards comprehensive rational management of the affected fisheries. The Vessel Moratorium Program is scheduled to expire on December 31, 1998. This expiration date is in the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), the FMP for Groundfish of the Gulf of Alaska (GOA), and the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. An expiration date was included in these FMPs because it was anticipated during the development of the Vessel Moratorium Program that it would be replaced by another management program designed to further rationalize the Groundfish Fishery of the BSAI, the Groundfish of GOA, and the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area by the expiration date. However, this anticipated replacement will not occur by the expiration date of the Vessel Moratorium Program. Any change in the expiration date will require FMP amendments since the expiration date is specified in the FMPs for the affected fisheries.

Various alternatives in dealing with the expiration of the Vessel Moratorium Program are analyzed in this document. Alternative 1 is the “no action” alternative, i.e., allow the Vessel Moratorium Program to expire on December 31, 1998. Choosing Alternative 1 would mean that there would be a hiatus in limited access management programs between the expiration of the Vessel Moratorium Program and beginning of fishing under the License Limitation Program (LLP). The LLP was approved by the Secretary of Commerce on September 12, 1997. Alternative 2 is extending the Vessel Moratorium Program until December 31, 1999. Choosing Alternative 2 would provide a one-year window to implement and commence fishing under the LLP. Option A under Alternative 2 provides that the Vessel Moratorium Program is extended for one year; however, the application period for a Vessel Moratorium Permit based on a Moratorium Qualification that was not the basis for a Vessel Moratorium Permit in the past would end on December 31, 1998. Practically speaking, choosing Option A under Alternative 2 would mean that the opportunity to apply for a Vessel Moratorium Permit would expire on December 31, 1998, except for an application for a Vessel Moratorium Permit based on a Moratorium Qualification that was used as the basis for a Vessel Moratorium Permit prior to December 31, 1998. An application for a Vessel Moratorium Permit that does not meet the eligibility criteria under Option A and that is submitted after December 31, 1998, would be denied, regardless of previous fishing history.

1.0 INTRODUCTION

The North Pacific Fishery Management Council (Council) is considering alternatives that would extend the temporary moratorium on the entry of vessels (Vessel Moratorium Program) into the commercial fisheries managed under the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), the FMP for Groundfish of the Gulf of Alaska (GOA), and the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. An extension of the Vessel Moratorium Program would avoid a hiatus in a limited access program for the affected fisheries that will occur if the Vessel Moratorium Program expires on December 31, 1998, as currently provided in the FMPs. The December 31, 1998, expiration date was included in the FMPs because it was anticipated during the development of the Vessel Moratorium Program that it would be replaced by another management program designed to further rationalize the Groundfish Fishery of the BSAI, the Groundfish of the GOA, and the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area by the expiration date. This anticipated replacement will not occur by December 31, 1998. The Council is considering these alternatives because any change in the December 31, 1998, expiration date will require FMP amendments since the expiration date is specified in the FMPs.

This document is the Regulatory Impact Review (RIR) for the FMP amendments to extend the Vessel Moratorium Program. The National Environmental Policy Act (NEPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA) require a description of the purpose and need for the preferred action as well as a description of alternative actions that may address the problem. Section 2 contains a discussion of the environmental impacts of the alternatives. Section 3 contains an RIR that addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives be considered.

1.1 Management Background

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) off Alaska are managed under the FMP for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the GOA. The commercial crab fisheries in and off Alaska in the Bering Sea are managed under the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. These three FMPs were prepared by the Council and approved by the Secretary of Commerce (Secretary) pursuant to the provisions the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the law that authorizes management of Federal fisheries by the Council and the Secretary.

Actions taken to amend FMPs or implement other regulations governing the groundfish or crab fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act, the most important of these are NEPA, the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), E.O. 12866, and the RFA. This document addresses the requirements of these Federal laws and regulations.

1.2 Purpose of and Need for the Action

On January 1, 1996, access to the groundfish fisheries in the EEZ off Alaska, except those managed under the Individual Fishing Quota (IFQ) Program for Pacific halibut and sablefish, and commercial crab fisheries in the Bering Sea in and off Alaska was limited by the Vessel Moratorium Program. The Council enacted, and the Secretary approved, the Vessel Moratorium in an effort to begin reducing excess capital and capacity in the affected fisheries. The Council intended the Vessel Moratorium Program to be an interim step towards achieving the optimum number of participants and capital in the affected fisheries, or what was termed the “comprehensive rationalization” of those fisheries. This Comprehensive Rationalization Plan (CRP), as envisioned by the Council, utilizes a step-wise approach to achieve its ultimate goal. The first step was the Vessel Moratorium Program, to be followed by a License Limitation Program (LLP) designed to further limit capital and capacity, as well as define the participants, in the affected fisheries. After implementation of the LLP, the Council intends to investigate other management programs to determine which one would best meet the requirements for the next step in the CRP process.

The Council included the December 31, 1998 expiration date in the Vessel Moratorium Program because it anticipated that the LLP would be in place by that time. In fact, design and implementation of the LLP took longer than expected, and the LLP will not be in place by December 31, 1998. To avoid a lapse in limited access management, and thereby undoing some of the benefits derived from implementing the Vessel Moratorium Program, an extension of the Vessel Moratorium Program is necessary.

1.3 Alternatives Considered

1.3.1 Alternative 1: Expiration of the Vessel Moratorium Program on December 31, 1998 (no action alternative)

This alternative would allow the Vessel Moratorium Program to expire on December 31, 1998. It requires no action from the Council. Choosing this alternative would mean that starting January 1, 1999, Federal groundfish fisheries in the EEZ off Alaska and commercial crab fisheries in the Bering Sea and the Aleutian Islands area in and off Alaska would not be under a limited access program. No limited access program for the affected fisheries would be in place until the beginning of fishing under the LLP, scheduled for January 1, 2000. Although all of the impacts of a lapse in a limited access program for the affected fisheries are not known, one potential impact could be speculative entry into the affected fisheries by persons who would not qualify to fish under the Vessel Moratorium Program or the LLP. Encouraging speculative entry is antithetical to the CRP process; therefore, allowing the Vessel Moratorium Program to expire does not appear to be an alternative in concert with the stated objectives of the Council.

1.3.2 Alternative 2: Extend the Vessel Moratorium Program until December 31, 1999 (one-year extension)

This alternative would extend the Vessel Moratorium Program until December 31, 1999, providing an additional one-year period to implement the LLP. NMFS currently estimates that fishing under the LLP will occur on January 1, 2000. If this estimate is accurate, no lapse will occur between the expiration of the Vessel Moratorium Program and the start of fishing under the LLP. However, if this estimate is too ambitious, or if the personnel or funding necessary to fully implement the LLP are not forthcoming, the LLP may not be ready on January 1, 2000. This would mean that there would be a lapse between the expiration of the Vessel Moratorium Program and the LLP, or alternatively, the Vessel Moratorium Program would have to be extended again.

1.3.2.1 Option A: Close the Application Period for a Vessel Moratorium Permit on December 31, 1998

This option would provide that the Vessel Moratorium Program is extended for one year; however, the application period for a Vessel Moratorium Permit based on a Moratorium Qualification that was not the basis for a Vessel Moratorium Permit in the past would end on December 31, 1998. Practically speaking, choosing Option A under Alternative 2 would mean that the opportunity to apply for a Vessel Moratorium Permit would expire on December 31, 1998, except for an application for a Vessel Moratorium Permit based on a Moratorium Qualification that was used as the basis for a Vessel Moratorium Permit prior to December 31, 1998. An application for a Vessel Moratorium Permit that does not meet the eligibility criteria under Option A and that is submitted after December 31, 1998, would be denied, regardless of previous fishing history.

2.0 NEPA, ESA, MMPA, AND CZMA REQUIREMENTS

2.1 Environmental Impacts of the Alternatives

National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (NOA 216-6) provides that FMP amendments that can be classified under one of the general categories described in sec. 6.02b.3.(b) of NOA 216-6 may receive a categorical exclusion (CE) from further analysis and requirements to prepare environmental documents under NEPA. A CE is granted to actions that individually or cumulatively do not have the potential to pose significant threats to the human environment. Section 6.02b.3.(b)(ii)(bb) of NOA 216-6 provides that actions that do not result in a significant change in the original environmental action such as an extension of the period of effectiveness of an FMP may receive a CE.

Alternative 1 (no action alternative) can be classified within the range or scope of alternatives addressed in the previous Environmental Assessment (EA) prepared for the Vessel Moratorium Program, and is in fact the chosen alternative of that EA. Alternative 2 and Option A under Alternative 2 are a one-year extension of the Vessel Moratorium Program and a cut-off of the

application period during that extension, respectively. These alternatives can be classified as extensions of the period of effectiveness of an FMP, for which a previous EA has been prepared. Therefore, this action is categorically excluded from further analysis and requirements to prepare environmental documents under NEPA.

2.2 Impacts on Endangered or Threatened Species

Endangered and threatened species under the ESA that may be present in the GOA and BSAI include:

Endangered

Northern right whale	<i>Balaena glacialis</i>
Sei whale	<i>Balaenoptera borealis</i>
Blue whale	<i>Balaenoptera musculus</i>
Fin whale	<i>Balaenoptera physalus</i>
Humpback whale	<i>Megaptera novaeangliae</i>
Sperm whale	<i>Physeter macrocephalus</i>
Snake River sockeye salmon	<i>Oncorhynchus nerka</i>
Short-tailed albatross	<i>Diomedea albatrus</i>
Steller sea lion (western stock)	<i>Eumetopias jubatus</i>

Threatened

Steller sea lion	<i>Eumetopias jubatus</i>
Snake River spring and summer chinook salmon	<i>Oncorhynchus tshawytscha</i>
Snake River fall chinook salmon	<i>Oncorhynchus tshawytscha</i>
Spectacled eider	<i>Somateria fischeri</i>

The alternatives analyzed in this document merely extend an existing management program and will not affect the current fishing practices of fishermen. Therefore, fishing activities conducted under any alternatives in this document would not affect endangered or threatened species or critical habitat in any manner not already considered in prior consultations on these fisheries.

2.3 Impacts on Marine Mammals

Marine mammals not listed under the Endangered Species Act that may be present in the GOA and BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon spp.*)] as well as pinnipeds [northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina*)] and the sea otter (*Enhydra lutris*).

The alternatives analyzed in this document merely extend an existing management program and will not affect the current fishing practices of fishermen. Therefore, none of the alternatives are expected to have a significant impact on marine mammals.

2.4 Coastal Zone Management Act

Implementation of the preferred alternative would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of Section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

3.0 REGULATORY IMPACT REVIEW: ECONOMIC AND SOCIOECONOMIC IMPACTS OF THE ALTERNATIVES

This section provides information about the economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, and quantification of the economic impacts where possible.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

This section also addresses the requirements of both E.O. 12866 and the Regulatory Flexibility Act to provide adequate information to determine whether an action is "significant" under E.O. 12866 or will result in "significant" impacts on small entities under the RFA.

E. O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

3.1 Economic and Social Impacts of the Management Alternatives

3.1.1 Alternative 1: Expiration of the Vessel Moratorium Program on December 31, 1998 (no action alternative)

Alternative 1 would allow the Vessel Moratorium Program to expire on December 31, 1998, as currently provided by the FMP language and regulations for the affected fisheries. This expiration would mean that there would not be a limited access program in place for the affected fisheries until management under the LLP, which is scheduled to occur on or about January 1, 2000. A lapse in a limited access program could lead to speculative entry into the affected fisheries by persons who would not have otherwise qualified to fish under the Vessel Moratorium Program or the LLP. Speculative entry could exacerbate the management problems limited access programs like the Vessel Moratorium Program and the LLP were designed to correct, e.g., overcapitalization, excess capacity, and a race for available resources.

Although the lapse would be temporary--estimated to last for approximately one year--avoiding it would provide better management continuity to the overall CRP. Further, a lapse may cause disruption to the fishing industry, which has been under the assumption that a smooth transition, i.e., no lapse, between the Vessel Moratorium Program and the LLP would occur. This assumption by the industry was not spurious, but rather based on credible information supplied by the Council and NMFS during the development of the LLP that fishing under the LLP would begin prior to the current expiration of the Vessel Moratorium Program. However, program

development has taken longer than originally anticipated; therefore, an extension of the Vessel Moratorium Program is necessary to avoid a lapse. Providing continuity and avoiding disruption are important aspects of any management regime and should be carefully considered when choosing an alternative.

3.1.2 Alternative 2: Extend the Vessel Moratorium Program until December 31, 1999 (one-year extension)

Alternative 2 would extend the Vessel Moratorium Program for one year, until December 31, 1999. This extension would provide NMFS with another year to complete the design and implementation of the LLP. If one year is sufficient time to complete design and implementation, the problems that could be caused by a lapse of a limited access program for the affected fisheries, as described under Alternative 1, would be avoided. However, if the time needs for the design and implementation of the LLP were to exceed one year, or if circumstances change such that money or resources are not available to design and implement the LLP in a timely fashion, then the problems described in Alternative 1 could occur, or alternatively, another action would have to be initiated to further extend the Vessel Moratorium Program.

3.1.2.1 Option A: Close the Application Period for a Vessel Moratorium Permit on December 31, 1998

This option would provide that the Vessel Moratorium Program is extended for one year; however, the application period for a Vessel Moratorium Permit based on a Moratorium Qualification that was not the basis for a Vessel Moratorium Permit in the past would end on December 31, 1998. Practically speaking, choosing Option A under Alternative 2 would mean that the opportunity to apply for a Vessel Moratorium Permit would expire on December 31, 1998, except for an application for a Vessel Moratorium Permit based on a Moratorium Qualification that was used as the basis for a Vessel Moratorium Permit prior to December 31, 1998. An application for a Vessel Moratorium Permit that does not meet the eligibility criteria under Option A and that is submitted after December 31, 1998, would be denied, regardless of previous fishing history. Application denials can be appealed under 50 CFR 679.4(c)(10), and a person who appeals a denial may be issued an interim-use permit. Eliminating the opportunity to submit an application for a Vessel Moratorium Permit on December 31, 1998, based on the above criteria would prevent further capitalization of the affected fisheries.

3.2 Identification of the Persons that May Be Affected By the Alternatives

Based on current information, about 1900 permits have been applied for and issued under the Vessel Moratorium Program. This number provides the outside boundary for how many current permit holders may be affected by these alternatives and includes persons holding permits that authorize fishing for groundfish only, crab only, and groundfish and crab. Some persons who

qualified for a permit under the Vessel Moratorium Program will not qualify for a license under the LLP. These persons will be able to participate in the affected fisheries for a longer period if Alternative 2 is chosen. This is also true if Alternative 1 is chosen, but for a different reason, i.e., if Alternative 1 is chosen, no person will be precluded from participating in the affected fisheries until fishing under the LLP begins.

If Alternative 2 without Option A is chosen, it is possible that a person who can qualify for a Vessel Moratorium Permit, and who may not have planned to apply for that permit by December 31, 1998, can apply after December 31, 1998, and receive a Vessel Moratorium Permit that would authorize fishing during the remainder of the extended Vessel Moratorium Program because the Vessel Moratorium Program has an open application period. However, if Alternative 2 with Option A is chosen, only a person who has been issued a Vessel Moratorium Permit based on an application submitted before December 31, 1998, will be authorized to fish after that date.

Also, persons who will qualify under the LLP will be affected. First, if such a person did not qualify for a Vessel Moratorium Permit, that person would be precluded from participating in the affected fisheries for a longer period if Alternative 2 is chosen, i.e., that person would be precluded from fishing during 1999. On the other hand, if Alternative 1 is chosen, such a person would be able to participate in the "open access" fishery during the lapse in a limited access program between December 31, 1998, and the beginning of fishing under the LLP. Second, if a person currently holds a Vessel Moratorium Permit and will qualify for a license under the LLP, that person must compete with persons who would not qualify for licenses under the LLP but that do hold Vessel Moratorium Permits and therefore authorized to fish for a longer time period if Alternative 2 is chosen.

3.3 Administrative, Enforcement and Information Costs

No significant additional administrative, enforcement, or information costs are expected for Alternative 1. Alternative 2 will require additional administrative costs for the preparation and adoption of FMP amendments and accompanying regulations. Further, if the LLP is not fully implemented by January 1, 2000, Alternative 2 may require additional administrative costs if another extension of the Vessel Moratorium Program is deemed necessary.

3.4 Economic Impact on Small Entities

The objective of the Regulatory Flexibility Act is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant impact on a substantial number of small entities an Initial Regulatory Flexibility Analysis (IRFA) must be prepared to identify the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits.

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$3,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. A "substantial number" of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, or resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

As analyzed in the Regulatory Impact Review (RIR), the approximately 1900 Moratorium Permit holders is a substantial number when compared to the universe of small entities that may be affected by this action (approximately 1900 Moratorium Permit holders, approximately 1450 vessels that are moratorium qualified but for which Moratorium Permits have not been issued, and an indeterminate number of persons who do not qualify for a Moratorium Permit but who will qualify for a license under the LLP). These approximately 1900 permit holders will be benefitted, i.e., authorized to continue fishing for one year. This positive impact does not trigger a finding of significant economic impact for purposes of the Regulatory Flexibility Act (RFA). The approximately 1450 vessels that are moratorium qualified, but for which Moratorium Permits have not been issued, would be affected by this action because the opportunity to apply for a Moratorium Permit based on the Moratorium Qualification of a vessel will end on December 31, 1998. However, the agency has determined that the effect would be negligible because during the period of the current Vessel Moratorium Program (1996 - 1998), Moratorium Permits were not requested for the 1450 vessels. Given that without an extension, the Vessel Moratorium Program will expire on December 31, 1998, it can be reasonably assumed that most, if not all, of these moratorium qualified vessels are vessels that were not going to be used during the Vessel Moratorium Program. Finally, the indeterminate number of persons who will qualify for a license under the LLP but who do not qualify for a Moratorium Permit, will be precluded from fishing in 1999, unless they receive a Moratorium Qualification transfer from an existing holder. The number of these persons, although not determined, can be assumed to be not substantial because of the limited time in which this situation could have occurred. Most persons who may qualify for a license under the LLP also qualified for a Moratorium Permit because the qualifying period for the Vessel Moratorium Program is similar to the General Qualification Period for the LLP. However, from February 10, 1992, through June 27, 1992, or 4.5 months, a person could have qualified for a license under the provisions of the LLP without qualifying for a Moratorium Permit. The limited time period in which this situation could have occurred (4.5 months) indicated that the resulting number of persons affected would not be substantial, i.e., at least 20%, when compared to the universe of affected small entities.

Based on the above analysis, it was determined that this action will not have a significant impact on a substantial number of small entities. Therefore, an IRFA was not prepared for this action.

4.0 SUMMARY AND CONCLUSIONS

This document analyzes alternatives that address the expiration of the Vessel Moratorium Program on December 31, 1998. Alternative 1 is the “no action” alternative and would allow the Vessel Moratorium Program to expire on December 31, 1998. Choosing Alternative 1 would mean that a lapse in limited access management programs between the expiration of the Vessel Moratorium Program and commencement of fishing under the LLP would occur. Alternative 2 is extending the Vessel Moratorium Program until December 31, 1999. Alternative 2 with Option A is extending the Vessel Moratorium Program but terminating the application period on December 31, 1998, for a Vessel Moratorium Permit based on a Moratorium Qualification that was not the basis of a Vessel Moratorium Permit in the past. Choosing Alternative 2 would extend the opportunity to apply for a Vessel Moratorium Permit and participate in the Vessel Moratorium Program for one year. Choosing Alternative 2 with Option A only would extend the opportunity to participate in the Vessel Moratorium Program for one year to persons holding validly issued Vessel Moratorium Permits.

None of the alternatives is expected to result in a "significant regulatory action" as defined in E.O. 12866 or have a significant economic impact on a substantial number of small entities under the RFA.

5.0 LIST OF PREPARERS

John Lepore
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802