

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

3. Section 648.14 is amended by adding paragraphs (a)(114) and (a)(115) to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(114) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(115) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. Section 649.4 is amended by revising paragraph (b)(2)(i) and adding paragraphs (b)(3)(iii), (b)(3)(iv), and (b)(3)(v) to read as follows:

§ 649.4 Vessel permits.

* * * * *

(b) * * *

(2) * * *

(i) To be eligible to renew or apply for a limited access lobster permit, a vessel or permit applicant must have been issued either a limited access lobster permit for the preceding year or a confirmation of permit history (CPH), or a vessel must be replacing a valid limited access American lobster permit from the preceding year or permit history confirmation. If more than one applicant claims eligibility to apply for a limited access American lobster permit based on one fishing and permit history, the Regional Administrator shall determine who is entitled to

qualify for the limited access permit or permit history confirmation.

* * * * *

(3) * * *

(iii) *Restriction on permit splitting.* A limited access American lobster permit may not be issued to a vessel or its replacement, or remain valid, if a vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(iv) *Consolidation restriction.* Limited access permits may not be combined or consolidated.

(v) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (q) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Information requirements for the CPH application are the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been

issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b)(1)(i)(D) of this section.

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[FR Doc. 98-30294 Filed 11-12-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981016290-8260-01; I.D. 090998B]

RIN 0648-AL20

Fisheries of the Exclusive Economic Zone Off Alaska; Vessel Moratorium Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 59 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendment 57 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 9 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area submitted by the North Pacific Fishery Management Council (Council). These amendments would extend the Vessel Moratorium Program (VMP) authorized under the aforementioned FMPs from January 1, 1999, through December 31, 1999, with one change. The one change would be that after December 31, 1998, no person could apply for a new moratorium permit unless the application is based on a moratorium qualification that was used as the basis for issuing a moratorium permit on or before December 31, 1998. Extension of the VMP from January 1, 1999, through December 31, 1999, would prevent a one-year hiatus between the current expiration of the VMP on December 31, 1998, and the start of fishing under the License Limitation Program (LLP) on January 1, 2000.

DATES: Comments on this proposed rule must be received by *December 14, 1998*. NMFS invited comments on the amendments themselves through *November 17, 1998* (63 FR 49892).

ADDRESSES: Comments should be addressed to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228

SUPPLEMENTARY INFORMATION:

The U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone (EEZ) are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the Council, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.*, and are implemented by regulations at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

NMFS implemented the VMP through regulations effective January 1, 1996, to impose a temporary moratorium on the entry of new vessels into the commercial groundfish fisheries in the EEZ of the GOA and the BSAI and the commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands (60 FR 40763, August 10, 1995). The Council intended to curtail increases in fishing capacity and provide industry stability while measures such as the LLP, recommended by the Council in June 1995, were developed by the Council, and if approved, implemented by NMFS.

NMFS approved the LLP on September 12, 1997. However, its implementation has required more time than originally anticipated. Fishing under the LLP is scheduled to begin on January 1, 2000; however, the VMP will expire on December 31, 1998. Unless the VMP is extended, a one-year hiatus will occur between the expiration of the VMP and the beginning of fishing under the LLP.

Extension of the VMP requires that the applicable FMPs be amended because the FMPs specify an expiration date of January 1, 1999 for the VMP. The Council submitted amendments to the applicable FMPs that, if approved and implemented by NMFS, would extend the VMP until December 31, 1999. During its consideration of extending the VMP to avoid a hiatus, the Council

was concerned about the potential of latent capacity entering the affected fisheries if new applications could be submitted during the extension. Under the existing VMP, an applicant can apply for a new moratorium permit at any time during the VMP. So far, approximately 1,900 moratorium permits, out of a potential of approximately 3,350, have been issued. If the VMP were extended without a restriction on applications, up to 1,450 more moratorium permits could be applied for and issued. Therefore, the Council in its recommended FMP amendments extending the VMP through December 31, 1999, recommended that no person be allowed to apply for a new moratorium permit after the current VMP expiration date, December 31, 1998, unless the application is based on a moratorium qualification that was used as a basis for obtaining a moratorium permit issued on or before that date.

Accordingly, under the proposed rule, an application for a moratorium permit received after December 31, 1998, would be denied unless the moratorium qualification on which the application is based already has been used as a basis for the issuance of a moratorium permit.

To reduce the administrative costs of extending the VMP, the proposed rule would extend existing moratorium permits through December 31, 1999, rather than authorizing the reissuance of new permits with the new expiration date. The only new moratorium permits that would be issued would be those based on moratorium qualification transfers. These new permits would also expire on December 31, 1999.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB approved the collection of this information under OMB control number 0648-0213.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Approved under 0648-013—Alaska Region Logbook Family of Forms: The estimated time for a vessel owner to complete a moratorium qualification is 0.46 hour per response.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities for the following reason:

This action is expected to affect approximately 1,900 moratorium permit holders, 1,450 vessels that are moratorium qualified, but for which permits have not been issued, and an indeterminate number of persons who do not qualify for a license under the upcoming LLP. The approximately 1,900 permit holders will benefit from the proposed rule in that they will be 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 1,450 vessels that are moratorium qualified, but for which moratorium permits have not been issued, would be affected by this action because the opportunity for the vessel's owner to apply for a moratorium permit based on the moratorium qualification of that 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 VMP (1996 - 1998), moratorium permits were not requested for these 1,450 vessels. In any event, these vessels have until the currently scheduled expiration of the VMP (i.e., December 31, 1998) to apply for a permit. Thus, this extension does not limit their ability to apply for a permit any more than it would have been limited under the *status quo*. 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. Although NMFS cannot determine exactly how many persons are in this third category, it believes them to constitute a small number 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 VMP 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 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 when compared to the universe of affected small entities.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 9, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.4, (c) heading and paragraphs (c)(1)(ii), (c)(1)(iii)(E), (c)(6) and (c)(7) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(c) *Moratorium permits (applicable through December 31, 1999)*—(1) *General.*

* * * * *

(ii) *Duration.* Notwithstanding the expiration date printed on the permit, a moratorium permit is valid through December 31, 1999, unless otherwise specified.

(iii) * * *

(E) The permit's term indicates an expiration of December 31, 1998, or December 31, 1999.

* * * * *

(6) *Application for permit*—(i) *General.* A moratorium permit will be issued to the owner of a vessel of the United States if he/she submits to the

Regional Administrator a complete application that is subsequently accepted and approved and if the vessel's LOA does not exceed the maximum LOA as specified in § 679.2.

(ii) *Contents of application.* A complete application for a moratorium permit must include the following information for each vessel:

(A) Name of the vessel, state registration number of the vessel, and the USCG documentation number of the vessel, if any;

(B) Name(s), business address(es), and telephone and fax numbers of the owner of the vessel;

(C) Name of the managing company;

(D) Valid documentation of the vessel's moratorium qualification, if requested by the Regional Administrator due to an absence of landings records for the vessel from January 1, 1988, through February 9, 1992;

(E) Reliable documentation of the vessel's original qualifying LOA, if requested by the Regional Administrator, such as a vessel survey, builder's plan, state or Federal registration certificate, fishing permit records, or other reliable and probative documents that clearly identify the vessel and its LOA, and that are dated before June 24, 1992;

(F) Specifications of the fishing gear(s) used from January 1, 1988, through February 9, 1992, and, if necessary, the fishing gear(s) used from February 10, 1992, through December 11, 1994;

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

(H) If applicable, transfer authorization if a permit request is based on transfer of moratorium qualification pursuant to paragraph (c)(9) of this section; and

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

(iii) An application for a moratorium permit will be denied if it is received

after December 31, 1998, unless it is based on a moratorium qualification for which a moratorium permit has been issued on or before December 31, 1998.

(7) *Moratorium qualification.*—(i) *Qualification by landings.* A vessel has moratorium qualification if:

(A) The vessel is an original qualifying vessel based on a legal landing of moratorium species between January 1, 1988, and February 9, 1992;

(B) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

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

(D) A moratorium permit for the vessel's moratorium qualification has been issued based on an application submitted on or before December 31, 1998.

(ii) *Qualification by transfer.* A vessel has moratorium qualification if:

(A) The vessel receives a valid moratorium qualification by a transfer approved by the Regional Administrator under paragraph (c)(9) of this section;

(B) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

(C) The moratorium qualification received by transfer has not been subsequently transferred; and

(D) A moratorium permit for the vessel's moratorium qualification has been issued based on an application submitted on or before December 31, 1998.

(iii) *Expiration of moratorium qualification.* A vessel's moratorium qualification will expire on December 31, 1998, unless a moratorium permit has been applied for on or before December 31, 1998, and subsequently issued based on that moratorium qualification.

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[FR Doc. 98-30435 Filed 11-12-98; 8:45 am]

BILLING CODE 3510-22-F