

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME
1 HOUR

DATE: April 14, 1998

SUBJECT: Moratorium Extension

ACTION REQUIRED

Review analysis to release for public review.

BACKGROUND

At the last meeting the Council formally initiated development of a plan amendment, for both the GOA and the BSAI, to extend the vessel moratorium beyond its current expiration date of December 31, 1998. This action is necessary because the license limitation program (LLP) approved by the Council and the Secretary of Commerce will not be implemented in time for the 1999 fisheries. Alternatives considered include No Action (allowing the moratorium to expire); extending the moratorium for either one or two years, or extending the moratorium until replaced by the LLP.

NMFS staff prepared the EA/RIR included in your notebooks under Item C-3(a). The EA/RIR is scheduled for initial review at this meeting with final action this June.

DRAFT

**ENVIRONMENTAL ASSESSMENT/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
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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) was designed to be an interim step towards comprehensive rational management of the affected fisheries. The Vessel Moratorium 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 that it would be replaced by the next step towards comprehensive rational management of 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. This anticipated replacement will not occur by the expiration date of the Vessel Moratorium. 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 are analyzed in this document. Alternative 1 is the "no action" alternative, i.e., allow the Vessel Moratorium to expire on December 31, 1998. Choosing Alternative 1 would mean that there would be a lapse in limited access management programs between the expiration of the Vessel Moratorium and commencement of fishing under the License Limitation Program (LLP). Alternative 2 is extending the Vessel Moratorium until December 31, 1999. Choosing Alternative 2 would provide a one-year window to implement and commence fishing under the LLP. Alternative 3 is extending the Vessel Moratorium until December 31, 2000. Choosing Alternative 3 would increase the opportunity window to implement and commence fishing under the LLP to two years. Alternative 4 is extending the Vessel Moratorium until superseded by the LLP. Choosing Alternative 4 would provide maximum flexibility and ensure that future amendments would not be necessary to prevent a lapse in limited access programs between the Vessel Moratorium and the LLP.

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) 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 would avoid a lapse in a limited access program for the affected fisheries that will occur if the Vessel Moratorium 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 that it would be replaced by the next step towards comprehensive rational management of 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. 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 Environmental Assessment/Regulatory Impact Review (EA/RIR) for the FMP amendments to extend the Vessel Moratorium. 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 a Regulatory Impact Review (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 fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act, the most important of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (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. 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 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, 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 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, an extension of the Vessel Moratorium is necessary.

1.3 Alternatives Considered

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

This alternative would allow the Vessel Moratorium to expire on December 31, 1998. It requires no action from the Council. Choosing this alternative would mean that starting January 1, 1999, until the LLP was in place, Federal groundfish fisheries in the EEZ off Alaska and commercial crab fisheries in the Bering Sea in and off Alaska would not be under a limited access program. Although all of the impacts of a lapse in limited access programs 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 or the LLP. Encouraging speculative entry is antithetical to the CRP process; therefore, allowing the Vessel Moratorium 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 until December 31, 1999 (one-year extension)

This alternative would extend the Vessel Moratorium 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 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 and the LLP, or alternatively, the Vessel Moratorium would have to be extended again.

1.3.3 Alternative 3: Extend the Vessel Moratorium until December 31, 2000 (two-year extension)

This alternative would extend the Vessel Moratorium until December 31, 2000, providing an additional two-year period to implement the LLP. This two-year window is one year more than NMFS currently estimates will be necessary to fully implement the LLP. If the estimate of NMFS is correct, this alternative would unnecessarily delay fishing under the LLP for one year. A one-year delay would not do irreparable harm to

the affected fisheries; however, implementing the LLP as soon as practicable is more consistent with the overall objectives of the CRP. On the other hand, if for some reason the LLP could not be fully implemented by January 1, 2001, this alternative, like Alternative 2, would cause a lapse in limited access programs for the affected fisheries.

1.3.4 Alternative 4: Extend the Vessel Moratorium until superseded by the License Limitation Program

This alternative would extend the Moratorium until superseded by the LLP, providing an additional, and unspecified, period to implement the LLP. Alternative 4 would provide maximum flexibility to NMFS by ensuring that no lapse would occur between the Vessel Moratorium and the LLP despite delays caused by funding or personnel shortfalls. However, not placing a deadline on the life of the Vessel Moratorium could be used as a reason to delay implementation of the LLP. Consideration must be given to whether the benefits of this alternative, i.e., maximum flexibility to take care of changed circumstances, outweigh the detriments, i.e., relieving NMFS of pressure to implement the LLP.

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will significantly affect the quality of the human environment. If the action is determined not to significantly affect the quality of the human environment based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact statement (EIS) must be prepared for major Federal actions significantly affecting the quality of the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives were discussed in Sections 1.2 and 1.3, and the list of preparers is in Section 5.0. This section contains the discussion of the environmental impacts of the alternatives including impacts on threatened and endangered species and marine mammals.

2.1 Environmental Impacts of the Alternatives

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks which may result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure; (2) changes in the physical and biological structure of the marine environment as a result of fishing practices, e.g., effects of gear use and fish processing discards; and (3) entanglement or entrapment of non-target organisms in active or inactive fishing gear.

A summary of the effects of the annual groundfish total allowable catch amounts on the biological environment and associated impacts on marine mammals, seabirds, and other threatened or endangered species are discussed in the final environmental assessment for the annual groundfish total allowable catch specifications.

The alternatives analyzed in this document merely extend an existing management program and would not have such impacts on the environment. Therefore, this action would not significantly affect the quality of the human environment.

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.

2.5 Finding of No Significant Impact

None of the alternatives is likely to significantly affect the quality of the human environment; therefore, the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or 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 on December 31, 1998 (no action alternative)

Alternative 1 would allow the Vessel Moratorium 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 or the LLP. Speculative entry could exacerbate the management problems limited access programs like the Vessel Moratorium 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, the 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 and the LLP would occur. This assumption was not spurious, but rather based on credible information supplied by the Council and NMFS. 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 until December 31, 1999 (one-year extension)

Alternative 2 would extend the Vessel Moratorium 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.

3.1.3 Alternative 3: Extend the Vessel Moratorium until December 31, 2000 (two-year extension)

Alternative 3 would extend the Vessel Moratorium for two years, until December 31, 2000. This extension would provide NMFS with another two years to complete the design and implementation of the LLP. It is anticipated that two years would be more than enough to complete the design and implementation of the LLP; therefore, this alternative may delay fishing under the LLP for a period longer than necessary. However, changed circumstances, i.e., lack of money or other resources, may delay progress on the LLP. Under such circumstances, either another action would have to be initiated to further extend the Vessel Moratorium, or the problems described under Alternative 1 that might happen if there was a lapse in a limited access program for the affected fisheries could occur.

3.1.4 Alternative 4: Extend the Vessel Moratorium until superseded by the License Limitation Program

Alternative 4 would extend the Vessel Moratorium until superseded by the LLP. Currently, it is anticipated that an extension of one year is all that is necessary to accommodate the design and implementation of the LLP; however, as discussed above, changed circumstances could cause the necessary time period to increase. This alternative would provide maximum flexibility to NMFS for designing and implementing the LLP. If fishing under the LLP could occur by January 1, 2000, then the extension of the Vessel Moratorium would only be one year, as proposed under Alternative 1. If fishing under the LLP could not occur until January 1, 2001, then this alternative also would accommodate that time period. The advantage of Alternative 4 is that the extension would be only as long as necessary to accommodate the gap between the original expiration of the Vessel Moratorium and the commencement of fishing under the LLP. Alternatively, Alternative 2 and 3 use fixed time periods that provide less flexibility to changed circumstances.

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

Approximately 1900 permits, out of a potential total of 4375 permits, have been issued under the Vessel Moratorium. This number provides the outside boundary for how many persons currently participating in the affected fisheries may be affected by these alternatives and includes Vessel Moratorium permits that authorize fishing for groundfish only, crab only, and groundfish and crab. Some persons who qualified for a permit under the Vessel Moratorium 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, 3, or 4 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. Furthermore, because the Vessel Moratorium has an open application period, 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.

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, 3, or 4 is chosen. 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 limited access programs 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 for a longer time period. The length of that time period will depend on whether Alternative 2, 3, or 4 is chosen.

3.3 Administrative, Enforcement and Information Costs

No significant additional administrative, enforcement, or information costs are expected for Alternative 1. Alternatives 2, 3, and 4 will require additional administrative costs for the preparation and adoption of FMP amendments and accompanying regulations. Further, if established time lines are not met, Alternatives 2 and 3 may require additional administrative costs if another extension of the Vessel Moratorium 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 above in the regulatory impact review, none of the alternatives reviewed will have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be affected by this action, the effects do not rise to the level of a "significant impact." These effects are (1) fishing under the Vessel Moratorium for a period longer than previously intended (Alternatives 2, 3, or 4) or (2) fishing in an open access fishery from January 1, 1999 until fishing under the LLP begins (Alternative 1). Neither of these circumstances will change the behavior of small entities currently participating in the affected fisheries, therefore these circumstances will not cause "significant impacts" on small entities as defined above. An IRFA was not prepared for this action based on that determination.

4.0 SUMMARY AND CONCLUSIONS

This document analyzes alternatives that address the expiration of the Vessel Moratorium on December 31, 1998. Alternative 1 is the "no action" alternative and would allow the Vessel Moratorium 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 and commencement of fishing under the LLP would occur. Alternative 2 is extending the Vessel Moratorium until December 31, 1999. Alternative 3 is extending the Vessel Moratorium until December 31, 2000. Choosing Alternative 2 or Alternative 3 would increase the opportunity window to design and fully implement the LLP. Alternative 2 would increase that

opportunity window by one year and Alternative 3 would increase that opportunity window by two years. Alternative 4 is extending the Vessel Moratorium until superseded by the LLP. Choosing Alternative 4 would provide maximum flexibility to NMFS and ensure that future amendments would not be necessary to prevent a lapse in limited access programs between the Vessel Moratorium and the LLP.

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

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