

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director



DATE: January 12, 1993

SUBJECT: Moratorium

**ACTION REQUIRED**

Council clarification of issues surrounding implementation of moratorium.

**BACKGROUND**

We passed the moratorium last June, but are still working on the proposed rule. It will be submitted in February and the program probably will not be implemented until mid-1993. Despite that delay, the industry is already responding to the moratorium provisions in selling, buying, and reconstructing vessels, so we have had many inquiries about Council intent behind the thirteen provisions of the preferred alternative (C-7(a)). Here are three issues that we need to run by you to ensure we are interpreting the provisions properly in responding to inquiries and in writing the regulations.

Issue 1: Vessel reconstruction/replacement before the moratorium is implemented.

Reconstruction of vessels, particularly increasing their size, is a hot topic in the fleet. Vessel owners are trying to figure out how far they can go in enlarging their vessels, and some are making very liberal interpretations of paragraph 4 (in the preferred alternative) which concerns reconstruction and upgrade during the moratorium. The paragraph heading refers to "... during the moratorium," while the text also restricts potential reconstruction between June 24, 1992, and the date when the moratorium is expected to be implemented, perhaps in mid-1993.

Here's how we interpreted the provision in our True North newsletter:

1. Reconstruction completed by June 24, 1992:  
New size unrestricted; one more upgrade allowed, subject to 20% increase limit, between June 24 and end of moratorium.
2. Reconstruction started before June 24, but not finished by then:  
New size unrestricted; no more upgrades allowed.
3. Reconstruction started on or after June 24:  
New size restricted by 20% rule; no more upgrades allowed.

Some people are trying to use a perceived loophole created by the semantics of paragraph 4, which speaks mainly to restrictions during the moratorium. They contend that they are unrestricted in changing the size of a vessel until the moratorium is actually implemented in the Federal Register. The Council needs to go on record for the benefit of the regulation drafters and the industry if they do indeed intend that the effective date for reconstruction purposes.

Concerning replacement of qualified vessels with non-qualified vessels, we've interpreted your intent, based on provisions 5-7, as follows:

After January 1, 1989, and until the moratorium expires, qualifying vessels can be replaced with non-qualifying vessels as often as desired so long as the replaced vessel leaves the fishery or bumps another qualifying vessel out in the case of multiple transactions. Though several replacements are allowed, vessel size can only be increased once, subject to the 20% rule.

And one last item is that of combined replacement and upgrade on or after June 24, 1992. We believe your intent was to limit the overall increase by the 20% rule. Thus a moratorium-qualified vessel could be replaced once with a non-qualified vessel 10% larger, and then the new vessel could be lengthened by another 10%, but not by 20% and then another 20%.

Issue 2: Exemptions for potential sablefish and halibut IFQ Recipients.

When the IFQ program gets started, vessels in the sablefish and halibut fixed gear fisheries will be exempt from the moratorium. IFQ implementation is one to two years out, and the moratorium will take affect this summer. So a future IFQ holder that went out and bought himself (herself) a new combination vessel to fish halibut, sablefish and salmon, thinking the exemption applied, will be out of luck during the moratorium until IFQs are implemented. The Council may want to go on record allowing IFQ-qualified recipients to use non-qualified vessels only in the sablefish and halibut fisheries under the moratorium before IFQs begin. It should not be too difficult a task for us to verify the standing of those few individuals who might fall into this category.

Issue 3: Transfers of moratorium and upgrade rights but not the vessels themselves.

Many questions have arisen concerning the transfer of fishing rights from one vessel to another, without the ownership of the vessel changing hands. The Council's motion allows for the replacement of a non-qualified vessel with a qualified vessel, with the latter vessel giving up its qualification right. Since the Council's approval of the moratorium, a considerable market in moratorium fishing rights has developed, with only the rights, not the vessels, trading hands. Staff interpretation is that this does not violate the intent of the Council's moratorium and should be allowed. The net effect is the same as if the vessels themselves were traded, as long as any transfers of fishing rights from one vessel to another do not violate the 20%, one-time upgrade rule. Further, in the case of multiple transfers, the vessel holding the fishing right cannot exceed the length of the original vessel by more-than 20%.

Perhaps the bigger concern with this issue is the tracking of moratorium qualified vessels. With this trading taking place, the list of moratorium qualified vessels will be much different at the time of implementation than it was at the time of the Council's approval last June. Neither the Council nor the NMFS have any standard forms or protocols for such trades; these fishing rights do not actually exist until the program is approved by the Secretary. We are advising interested inquirers that they are engaging in a private legal contract and should maintain proper documentation of such transfers.

**When the time comes to issue fishing permits under the moratorium, applicants will be required to furnish proof of vessel qualification.**

**Finally, unless otherwise advised by the Council, the regulations will assume that the moratorium fishing rights remain with any vessel that is traded, or has been traded in the past, unless otherwise specified by legal agreement.**

## MORATORIUM MOTION

As Amended by the North Pacific Fishery Management Council  
June 25, 1992

### 1. Qualifying Period

In order to qualify, a vessel must have made a reported landing in one of the designated moratorium fisheries during the following period:

Beginning Date: January 1, 1980

Ending Date: February 9, 1992

### 2. Length of Moratorium

Until Council rescinds or replaces; not to exceed 3 years from date of implementation, but Council may extend for 2 years if a permanent limited access program is imminent.

### 3. Crossovers During Moratorium

There are no further restrictions on a qualified vessel crossing over from one fishery to another (groundfish, crab, or halibut) during the moratorium, regardless of past participation.

### 4. Reconstruction of Vessel During the Moratorium

An eligible vessel that is reconstructed during the moratorium would retain its privilege to participate in all fisheries under the Council's jurisdiction so long as the physical reconstruction was started before June 24, 1992. If reconstruction commences on or after that date, an increase in length may not exceed 20% of the vessel's original length overall (LOA), and the increase shall not result in a vessel that exceeds 125 feet LOA. Reconstruction of vessels over 125 feet LOA is allowed so long as overall length is not increased; i.e., no increase in length is permitted in the reconstruction of vessels over 125 feet. Reconstruction can be done only once during the moratorium.

### 5. Replacement of Vessel During the Moratorium

A vessel may be replaced during the moratorium with another vessel so long as the length of the replacement vessel does not exceed 20% of the overall length of the vessel being replaced, and such changes shall not result in a vessel that exceeds 125 feet LOA. Replacement of vessels over 125 LOA is allowable so long as overall length of the replacement vessels does not exceed the length of the original qualifying vessel. Qualifying vessels are limited to a one-time increase in length. The replaced vessel permanently loses its right to participate in all fisheries under the Council's jurisdiction during the moratorium unless it is subsequently used to replace another eligible vessel.

**6. Replacement of Vessel Lost or Destroyed During the Moratorium**

A vessel lost or destroyed during the moratorium can be replaced with any other vessel that qualifies under the moratorium. For a replacement vessel that does not qualify under the moratorium, such vessels shall not exceed 20% greater overall length than the vessel that is replaced, and the increase shall not result in a vessel that exceeds 125 feet LOA. Replacement of vessels over 125 LOA is allowed so long as overall length of the replacement vessel does not exceed the length of the original qualifying vessel. Qualifying vessels are limited to a one-time increase in length. When replaced, the lost or destroyed vessel permanently loses its right to participate in all fisheries under the Council's jurisdiction during the moratorium.

**7. Replacement of Vessel Lost or Destroyed Before the Moratorium**

Any vessel lost or destroyed after January 1, 1989 can be replaced with any vessel that qualifies under the moratorium. For a replacement vessel that does not qualify under the moratorium such vessels shall not exceed 20% greater overall length than the vessel that is replaced, and the increase shall not result in a vessel that exceeds 125 feet LOA. Replacement of vessels over 125 LOA is allowed so long as overall length of the replacement vessels does not exceed the length of the original qualifying vessel. Qualifying vessels are limited to a one-time increase in length. When replaced, the lost or destroyed vessel permanently loses its right to participate in all fisheries under the Council's jurisdiction during the moratorium. Eligible lost or destroyed vessels replaced under this provision would have to make a landing within two years of implementation of the moratorium in order to qualify.

**8. Small Vessel Exemptions**

- (a) Gulf of Alaska: Vessels 26 feet or less are exempted from the moratorium.
- (b) Bering Sea/Aleutian Islands: Vessels 32 feet or less are exempted from the moratorium.

**9. 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 feet 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.

**10. Minimum Qualifying Poundage**

No minimum poundage is specified.

**11. Applicable Sectors of the Industry**

The moratorium will be applied to the harvesting sector only, including catcher vessels and catcher-processor vessels in all groundfish, halibut, and crab fisheries.

## **12. Appeals**

The appeals procedure will consist of an adjudication board of government persons and non-voting industry representatives.

## **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 catch of species other than halibut and sablefish exceeds 20%, then the vessel must be a moratorium-qualified vessel. The bycatch of species other than halibut and sablefish cannot exceed 20% for non-qualified vessels.