and is necessary for management of the fishery. One application form is used to apply for both the Federal Fisheries Permit and the Federal Moratorium Permit and only one form needs to be submitted to apply for both in 1996.

Moratorium permits were proposed to be valid only for the calendar year for which they were issued, which would have required an annual renewal to confirm the validity of the vessel's qualification. Under the final rule, a moratorium permit, once issued, will remain valid for most vessels through December 31, 1998 (for some vessels through December 31, 1997, with renewal allowed for 1998 if the vessel makes a legal landing of a moratorium species in 1996 or 1997), or until the moratorium qualification on which the permit is based is transferred. The owners of most vessels with a moratorium permit are not required to provide information regarding moratorium qualification again during the temporary moratorium period.

Response to Comments
Twelve letters of comment were
received on the proposed rule before the
end of the comment period. The
following paragraphs summarize and
respond to those comments.

Comment 1: The proposed cutoff date for determining the replacement of a moratorium-qualified vessel that was lost or destroyed should be concurrent with the beginning of the qualifying period. As proposed, the qualifying period begins January 1, 1988, but a qualified vessel lost before January 1, 1989, loses its moratorium qualification and a transfer of it would not be possible. The proposed date of January 1, 1989, appears arbitrary and capricious because it is inconsistent with the qualifying period dates. If the date of January 1, 1989, is adopted for determining the replacement of lost or destroyed vessels, then an exception should be made in cases where the purchase of the fishing rights of a sunken vessel were made before the Council took its action to establish that

Response: The cutoff date of January 1, 1989, for replacing or salvaging a lost or destroyed vessel has a rational basis and is not arbitrary and capricious. In recommending this date, the Council reasoned that the owner of a vessel lost or destroyed before 1989 likely would have received insurance claims and replaced the vessel or begun salvage operations within the remaining qualifying period. If this had not happened, then the vessel owner probably did not intend to continue participation in the moratorium fisheries as a vessel owner. This

measure provides a means of reducing the size of the qualifying fleet by excluding lost or destroyed vessels that were not replaced or salvaged within a reasonable period of time before the end of the qualifying period on February 9, 1992. The Council recommended this date in its initial moratorium proposal (June 3, 1994, 59 FR 28827) in which the qualifying period was January 1, 1980, through February 9, 1992. The Council's revised amendment proposal changed the qualifying period to January 1, 1988, through February 9, 1992. Although the beginning of the revised qualifying period and the vessel replacement cutoff date are only 1 year apart, the rationale for the cutoff date remains appropriate and reasonable. The purchase of moratorium qualification before the Council acted in June 1992, to propose a moratorium was highly speculative. No one knew at that time what the conditions and criteria for qualification would be or whether NMFS would approve the moratorium proposal. Limiting speculative investment in fishing capacity is an objective of the moratorium. An exception to the vessel replacement cutoff date would reward such speculation.

Comment 2: Any sunken vessel that has not been replaced within 3 to 4 years of its sinking should be disqualified from transferring its moratorium qualification. Further, any vessel owner who constructs a new vessel after having one sink should have the new vessel counted as the replacement vessel to prevent him from qualifying the new vessel and selling the fishing rights of the sunk vessel separately which would bring in two new vessels

Response: Limiting the replacement of lost or destroyed vessels during the moratorium is reasonable; however, the moratorium is scheduled to expire in 3 years. If the Council were to determine that the moratorium should be extended, then such a measure could be included in a moratorium renewal proposal. The Council used this rationale, however, for vessels lost or destroyed during the qualifying period. The Council proposed a cutoff date, January 1, 1989, which is about 3 years before the end of the qualifying period. A qualified vessel lost or destroyed before the cutoff date, but not replaced during the qualifying period, would be disqualified from receiving a moratorium permit unless salvage operations had started before June 24, 1992. The moratorium rules provide for replacing vessels lost or destroyed on or after January 1, 1989, by transferring moratorium qualification from the lost

vessel to a replacement vessel. No provision is made for replacing a lost or destroyed vessel with two vessels.

Comment 3: There was no definition of "length overall" in the proposed rule. The rule should clarify how NMFS intends to ascertain a vessel's current LOA.

Response: The proposed rule, at § 676.2, defined LOA as this term is defined at §§ 672.2 and 675.2. NMFS will determine maximum LOA by relying on Federal and state fishing permit data currently on file that indicate the original qualifying LOA of a vessel on June 24, 1992. Other documentation of a vessel's LOA may be requested by NMFS, especially if the maximum LOA is contested or in transfers of moratorium qualification. Such documentation may include a vessel survey, builder's plan, state or Federal registration certificate, or other reliable and probative documents. Fishing for moratorium species with a vessel that has an LOA in excess of the maximum LOA provided by the moratorium permit for that vessel is prohibited and would be a violation of the permit. Investigation of such activity will be an enforcement function.

Comment 4: If the moratorium qualification of a vessel is purchased before the effective date of the moratorium, then getting the signature of the original owner of the moratorium qualification on the transfer application should be unnecessary providing a copy of the purchase contract or bill of sale is attached to the transfer application as required

*Response*: The regulations implementing the moratorium qualification transfer procedure at § 676.5(c) require, in part, a legible copy of a contract or agreement to transfer moratorium qualification signed by the affected persons and signatures of the same persons on a transfer application form. NMFS agrees that obtaining the signature of a former owner of moratorium qualification on a transfer application may be difficult if the applicant has lost contact with the former owner. In such instances, NMFS may waive the required signature of the former owner of the moratorium qualification on the transfer application if the signature(s) on the transfer contract or agreement are determined by NMFS to demonstrate sufficiently the former owner's intent to relinquish his/ her interest in the moratorium qualification to the transfer applicant. A decision to waive any signature requirement on a transfer application will be made on a case-by-case basis. Section 676.5(c)(8) has been changed to provide for this discretion.