BSAI Area crab fishery to enter that fishery for the first time under the moratorium provides limited flexibility for vessels to move between the groundfish and BSAI Area crab fisheries. This flexibility is limited to vessels using the same type of gear in both fisheries (e.g., pot gear). This limited crossover provision is fair and equitable. Even though it provides advantages to one group to the detriment of another, it is justified in terms of the objective of the moratorium and the respective FMPs. The analysis of the proposed moratorium includes numbers of vessels that would be affected by moratorium alternatives with different qualifying periods.

Comment 10: The Alaska Board of Fisheries adopted its crab pot limitation to be consistent with the vessel lengths described in the moratorium proposed by the Council. Some vessel owners may increase the length of their vessels to carry more pots while maintaining the moratorium qualification of their vessels. The moratorium rule should address this issue and clearly state that such lengthening would not be allowed under the moratorium.

Response: The moratorium rule relies on the existing LOA definition in 50 CFR parts 672 and 675. That definition states that the LOA of a vessel means "the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments." If the LOA of a vessel exceeds its maximum LOA, then that vessel would be denied a moratorium permit, or if a moratorium permit were issued before the vessel length was increased to exceed its maximum LOA, then the permit would be invalidated. The moratorium regulations do not prohibit a vessel from changing its LOA from its original qualifying LOA, however, a vessel must be equal to or less than its maximum LOA to be issued or hold a valid moratorium permit.

Comment 11: There was a lack of public review and timely analysis associated with the Council's adoption of the moratorium. The time allowed for public comment on the proposed rule was too restrictive and unnecessarily abbreviated. Twenty days for public comment on an issue as significant to the fishery as is the moratorium is unreasonable, especially when the individual listed in the proposed rule notice as the contact for further information was absent from his NMFS office for all but 3 days of the 20-day public comment period. The convenience of the public seems to have been ignored. One letter requested additional time in which to comment.

Response: NMFS determined that a 20-day public comment period on the proposed rule was sufficient. The moratorium proposal was a revision of a previously published proposal (59 FR 28827, June 3, 1994) on which there was a 45-day comment period. Further, the moratorium proposal has been an issue of public interest and expression ever since the Council took its initial action on it in June 1992. Ample time has been provided for public comment on this issue to the Council and to NMFS. NMFS temporarily assigned another individual, who also was familiar with the moratorium proposed rule, to serve in the absence of the individual listed as the contact for further information. Public queries about the proposed rule to the contact phone number and address during the comment period were addressed.

Comment 12: Financial arrangements should not be disrupted by allowing moratorium qualifications to be transferred without regard to the legitimate interests of those who rely on the value of the vessel, together with its right to fish, in extending credit to the vessel owner. The mandatory requirements for an application for transfer in proposed § 676.5(c) should be amended to include consent of mortgagees of record. There is precedent in maritime law for requiring mortgagee consent before action is taken that could jeopardize the mortgagee's interest in a vessel. The addition of such a requirement could be easily administered by relying on U.S. Coast Guard records and requiring an applicant to provide a Coast Guard certificate of ownership and consent of any mortgagees of record with a transfer application.

Response: The mortgagee's interest in a vessel could be protected by including, in the mortgage agreement or contract, a requirement that the vessel owner secure the approval of the mortgagee before transferring ownership of the vessel or its moratorium qualification to another person. The regulatory burden of complying with the moratorium qualification transfer requirements will be lessened to the extent that the mortgagee's interest in the vessel can be protected without government intervention through a private agreement.

Comment 13: The proposed qualifying period neither provides for a fair and equitable allocation of fishing privileges, nor reasonably considers present participation. The qualifying period is based predominantly on economic and social factors that existed

before June 1992 and ignores current economic conditions. Investments and participation that occurred in the groundfish and crab fisheries in the past 3 years were legal and reasonable, but are ignored by the qualifying period. The qualifying period should be modified to allow for present participants to be included under the moratorium.

Response: The Council and NMFS have taken present participation into account in establishing the qualifying period. The initially proposed qualifying period, January 1, 1980, through February 9, 1992, would have allowed an excessive number of vessels to qualify. After disapproval of the original moratorium proposal, the Council revised the qualifying period to January 1, 1988, through February 9, 1992. This change gave more weight to the vessels participating in the latter part of the original qualifying period. At its meeting in September 1994, the Council considered but chose not to extend the qualifying period through 1993. The Council made clear that it wanted to maintain its cutoff date of February 9, 1992, and did not want to reward persons who entered new vessels into the fisheries after that date by including them in the qualifying period. The Council and NMFS adequately notified the fishing industry that the future fishing privileges of new vessels entering the fisheries under Council authority were at risk by control date notices published September 5, 1990 (55 FR 36302), and June 21, 1993 (58 FR 33798), and the moratorium proposed rule published June 3, 1994 (59 FR 28827). The participation of a qualified vessel in a fishery that it did not participate in before February 9, 1992, was acknowledged by the Council in its revised moratorium proposal. This provision allows, for example, a vessel that qualified by participation in the groundfish fishery before February 9, 1992, and between February 10, 1992, and December 11, 1994, and that crossed over into the BSAI Area crab fishery, to continue access to the BSAI Area crab fishery during the moratorium. This crossover provision takes into account the investment in qualified vessels since February 9, 1992, but does not allow for qualification of vessels that began fishing for any moratorium species for the first time after that date.

One letter submitted after the close of the comment period stated that the vessel reconstruction provisions and the maximum length overall provisions amount to unlawful retroactive rulemaking under a recent U.S. Supreme Court decision, Bowen v.