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A typo on p. 8 has been corrected.

New England Fishery Management Council

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MEMORANDUM

DATE: September 10, 2013
TO: Groundfish Oversight Committee (Committee)
FROM: Groundfish Plan Development Team (PDT)
SUBJECT: Progress on Amendment 18

This memo summarizes the work that the PDT has done related to Amendment 18 since the August 14 Committee meeting.

On August 14, a few motions were made to draft measures that would limit the accumulation/use of permits/PSC/ACE. However, none of these motions carried, in part, because some Committee members were concerned about including specific cap numbers or percentages at this stage of amendment development, without two forthcoming analyses (see Committee meeting summary for details):

1. At the June 12 Committee meeting, Chad Demarest of the Northeast Fisheries Science Center Social Sciences Branch presented the draft report, ðTrends in Groundfish Fishery Concentration, 2007 ó 2013ö with the caveat that not all of the fishery permits were included in the analysis. At that time, data on the Confirmation of Permit History (CPH) permits¹ had not yet been included in the database that holds the permit ownership data. Over the summer, NMFS has accomplished this task, and an update to the analysis is underway. However, an updated report is not available in time for the September 16 Committee meeting.
2. At the August 14 Committee meeting, NEFMC staff informed the Committee of a pending contract with the economic consulting firm Compass Lexecon to help the NEFMC determine an appropriate excessive shares limit relative to this fishery. That contract is now underway (see below).

Over the past few months, the Committee has discussed several ideas for measures to include in Amendment 18. The PDT has drafted language for potential measures based on the Committee conversation to date (Appendix I, p. 9-15). Perhaps at its September 16 meeting, the Committee could walk through these draft measures to determine if they approach the Committee's intent. PDT feedback and additional questions are provided below.

¹ CPH permits are limited access groundfish eligibilities that are not attached to a vessel.

Permit splitting and vessel upgrade restrictions

The only motion that passed relative to Amendment 18 at the August 14 Committee meeting was the following:

Motion: request the PDT develop alternatives that would allow for splitting GF permits and or PSC off the rest of the limited access permits on that vessel for permanent transfer. To consider revisions to vessel upgrade restrictions to allow more flexibility for the fleet and improved safety. (Carried 6/0/1)

Permit splitting (Appendix I, Section 4.1)

Limited access permits were linked by an omnibus consistency amendment in the late 1990s (NEFMC 1999). Splitting off multispecies permits has the potential for implications in other fisheries, particularly if effort in other fisheries is increased. Such shifts may not pose problems for the managed stocks per se, as they are managed under catch limits. However, the habitat and protected resources impact analyses often examine the potential for spatial and temporal effort shifts within a fishery. Depending on the magnitude of shifts, this could have minor to significant impacts that may be difficult to predict how shifts may occur, because that requires being able to forecast fishing behavior.

If there is a desire to control potential effort shifts into other fisheries, this might require some development of restrictions in those fisheries and FMPs. The groundfish plan could only make permit changes that are applicable to groundfish permits, and without making the changes to other FMPs, some permit holders might wind up with a groundfish permit that cannot be added or combined to any other permit. Depending on how permit splitting alternatives develop, it may be necessary to engage the MAFMC.

The Committee may want to articulate how it envisions that permit splitting would achieve the goals of Amendment 18. This would help the PDT in drafting alternatives. Permit splitting has the potential to advance consolidation in the fishery, particularly without an accumulation limit in place.

Splitting PSC of a multispecies stock off of a suite of permits is possible, but could greatly increase tracking complexity. It may not be possible to detach PSC from the multispecies permit it is associated with, without splitting said permit. There could be significant implementation challenges if permit or PSC splitting is recommended for implementation, and the Analysis and Support Division of the Northeast Regional Office (NERO) should be consulted on the feasibility of specific approaches.

Questions: Could the Committee specify its intent with permit splitting? Is the Committee interested in having the Council develop an omnibus amendment? If the split permit were sold, would catch history be transferred to the new owner?

Vessel upgrade restrictions (Appendix I, Section 4.2)

NERO is proposing an omnibus amendment to all FMPs to modify the fishing vessel baseline specifications and upgrade restrictions (Appendix II, p. 16-43). This action, as proposed, would not be a Secretarial amendment; however, NERO staff would prepare the documents and analysis and the final product would be adopted by the NEFMC and MAFMC, with implementation targeted for May 2015. This is also the Amendment 18 implementation target

date. NERO staff member Melissa Hooper will be giving a presentation of the proposed action at the September Council meeting.

The proposed action would be fairly narrow:

1. Remove the gross and net tonnage restrictions from baseline and upgrade restrictions; and
2. Remove the one-time upgrade restriction.

NERO is not proposing changes to the vessel length or horsepower provisions, so those elements would remain as part of the vessel baseline, and upgrades would continue to be restricted to 10% of the baseline length and 20% of the baseline horsepower. The PDT recommends tabling further consideration of related measures in Amendment 18, until after the September Council meeting. If the NEFMC and MAFMC want to consider more significant changes to the baseline/upgrade provisions, it may not be appropriate for NERO to have the lead on the action and it would likely take significantly more time to be implemented.

Questions: Which vessel upgrade restrictions are the Committee interested in changing? If all restrictions were removed, how would the Amendment 18 goal of promoting diversity be achieved? Would the Committee like to table further discussion until after the September Council meeting?

Defining non-profit permit banks (Appendix I, Section 4.3.1)

To date, Committee members have expressed that, if accumulation limits are established for this fishery, that permit banks should be held to a higher cap (less restrictive) than business entities, but that there should also be measures to ensure that permit banks, cumulatively, do not òtake overö the fishery. This would apply to both the state-operated permit banks, already defined through Amendment 17, and the non-profit entities that hold permits for the purpose of leasing Annual Catch Entitlement (ACE) to active fishermen. These entities are commonly referred to as òprivate permit banks,ö but the PDT recommends that they be referred to as ònon-profit permit banksö to distinguish them from other private entities that lease ACE.

To identify which entities qualify to be subject to less restrictive accumulation limits, the PDT recommends that Amendment 18 define a non-profit permit bank, and some suggestions for criteria are listed in Appendix I, Section 4.3.1.2. If all entities are subject to the same accumulation limit, then a definition is unnecessary. At the August 14 Committee meeting, a Committee member suggested looking at language developed in Amendment 15 to the Scallop Fishery Management Plan. Section 3.4.2.5 of the Final Environmental Impact Statement contains measures to implement Community Fishing Associations (CFAs), which could purchase scallop permits and Individual Fishing Quota (IFQ) and lease IFQ (Appendix III, p. 44-50). Alternatives to implement CFAs were not chosen by the NEFMC, due to òincomplete development, but the Council noted that this should be a priority for future considerationö (NEFMC 2010, p. xiii). The PDT pulled out a few ideas from what was developed in Scallop A15 for the draft definition of groundfish non-profit permit banks. Perhaps there are additional ideas that resonate with the Committee.

Currently, the non-profit permit banks must enroll in sectors, and this is reflected in the text below the criteria list in Appendix I. However, the Committee may want to consider exempting the non-profit permit banks from this requirement. This may reduce administrative burden for these entities and be an incentive to be a recognized as a non-profit permit bank if they do not have to both enroll in a sector and be approved as a non-profit permit bank.

Question: What public good should an entity provide to qualify for a less restrictive accumulation limit? How should that be worked into the qualification criteria? Should they involve the fishing community in some way? Should officers be limited in how much ACE they can lease from their permit bank?

Accumulation limits (Appendix I, Section 4.3.2)

The Committee has discussed many ways that accumulation limits could be established for the fishery, and has expressed interest in not narrowing the focus at this point. There are many ways that the related alternatives could be structured in Amendment 18, but the PDT has developed Section 4.3.2 as a strawman. Key distinctions between the options are underlined. Not included are alternatives to limit the holdings or use of sectors, pending further Committee input.

Specific cap percentages are also not yet included, pending further Committee input. The exception is in Section 4.3.2.2.2, Option A, which reflects the June 12, 2013 Committee motion regarding a 5% cap on permits.

Included in Sections 4.3.2.1.2 and 4.3.2.2.2 are alternatives to limit the holdings of Northeast multispecies permits, with a note that this includes permits issued to vessels and eligibilities in Confirmation of Permit History (Option A). There is also an option (Option B) to limit holdings of Moratorium Right Identifiers (MRIs) with associated PSC. This would focus the accumulation limit to what contributes to the ability to catch fish.

More information about MRIs was requested at the August 14 Committee meeting. The MRI is a unique identifying number that is attached to a multispecies permit. A plain language description of MRIs and PSC calculation has been published by NMFS (2010)².

Questions: Would the Committee like to include alternatives for sector-level accumulation limits? Does the general structure of these alternatives resonate with the Committee? Why or Why not?

Compass Lexecon analysis

Compass Lexecon is currently conducting an economic analysis of the groundfish fishery to help the NEFMC determine an appropriate excessive shares limit for the fishery. They are working under a contract with the NEFMC, and Rachel Feeney is serving as the technical monitor for the project. The Terms of Reference and anticipated work phases (Appendix IV, p. 51) were presented at the August 14 Committee meeting. Phase I is now underway, and the project is on track to be completed in 2013.

Northeast Hook Fishermen's Association proposal

Since the August 14 Committee discussion of the proposal submitted by the Northeast Hook Fishermen's Association (NEHFA)³ for potential Amendment 18 options for Handgear A (HA) permits, discussion has continued between PDT members, NMFS personnel, Committee leadership, and industry members.

² http://www.nero.noaa.gov/sfd/sectordocs/PSC_Calculation.pdf

³ NEHFA proposal included in Correspondence.

Generally, the NEHFA proposes measures to separate the cod catch history associated with HA permits into a handgear-specific fishery, with additional constraints to ensure that HA permits and their history remain associated with handgear fishing. Additional proposed measures are designed to improve access to available catch limits and operational efficiency of a handgear-only fishery.

The Committee could consider the following approaches:

- A. Do not split the common pool.
 - a. Encourage HA permit holders to enroll in sectors or form a new sector. Some exemptions to sector program requirements could only be made through Amendment 18 or other Council action.
 - b. Change components of the common pool management program through Amendment 18 or other Council action.
- B. Split the common pool.
 - a. Create a handgear A component and a general component through Amendment 18 or other Council action.
- C. No action.

The following discussion examines Approaches A and B, listing potential issues to consider for each (Table 1). In addition, some of the ancillary components of the proposal and additional issues are highlighted. Given recent PDT priorities, the discussion here is largely general. Should the Committee advance specific items for Council action, future discussion will be more specific.

FY13 HA permit use

For FY13, there were 103 HA permits renewed. To date, 22 have been used to actively fish by one fisherman enrolled in a sector and 21 fishermen enrolled in the common pool. There are 20 HA permits enrolled in seven unique sectors, including one that has been actively fished. Thus, the ACE associated with 19 HA permits is being used by sector members fishing with other gear types. Any discussion of new exemptions or changes to common pool or sector management should include the costs and benefits to the current common pool members and the active and lease-only sector members (e.g. equity of the proposed change, potential for grandfathering).

Approach A: Do not split the common pool

Many of the NEHFA proposal components could be achieved through participation in sectors, particularly through the use of sector exemptions or specific provisions within operations plans. Some HA permit holders currently enrolled in the common pool have been receptive to this concept, others have not.

A benefit of a sector-based approach is that HA permit holders would have the flexibility to choose annually between joining a sector (and which sector) or the common pool. Creating a HA-specific common pool would limit choices, particularly if all HA permits had to enroll in it.

One concern the NEHFA has raised about sector management is that the use of the Vessel Monitoring System (VMS) would be cost-prohibitive. Use of VMS is a sector reporting requirement, thus is not currently eligible for a sector exemption request. VMS is used to monitor closed areas and to tie together all data sources for a trip that are used in catch

monitoring. Changes to VMS requirements (e.g. an exemption for vessels fishing with HA permits) would require Council action. The Committee should consider the potential enforcement and equity costs and benefits of doing so. NEHFA proposes changing the Interactive Voice Response (IVR) reporting requirements associated with the common pool. IVR reporting would be replaced by VMS if joining a sector.

Similarly, the NEHFA has expressed concerns about the at-sea monitoring (ASM) requirements of sectors, and potential financial burden if an industry-funded program is implemented in the future. Under current regulations, sector vessels are not exempt from ASM and may not receive ASM sector exemptions. Changes to ASM requirements (e.g. an exemption for vessels fishing with HA permits) would require Council action. The Committee should consider the potential enforcement and equity costs and benefits of doing so.

A benefit of enrolling in sectors is that sectors have been annually exempted from the 20-day spawning block as part of their operations plans, which is consistent with the NEHFA proposal. The NEHFA also proposes being exempt from rolling and year-round closure areas. Both sectors and common pool vessels are exempt from much of the rolling closures. Sector requests for exemption from additional portions of the rolling closures have been rejected by NMFS, due to concerns of expected impact to spawning stocks beyond mortality, interaction with marine mammals, and the potential to jeopardize the Gulf of Maine (GOM) cod rebuilding program. The NEHFA uses current recreational fishery access to areas closed to commercial fishing as justification of their proposal, arguing that their fishing practices and environmental impact are very similar. Allowing commercial fishing in areas currently closed to it can only be achieved through a regulatory change that would require Council action (e.g., habitat omnibus amendment). If HA vessels participate in sectors, the Committee could advise NMFS to consider handgear A sector exemption requests for additional rolling closure and year-round closure areas. The Committee would need to supply supporting rationale for changes to closed area access.

A benefit to enrolling in sectors is not being subject to the trimester catch management of the common pool. There also would not be trip limits. Some NEHFA proposal proponents have indicated that they would prefer to continue to manage catch with input controls. A sector operations plans could include requiring trip limits of their members.

The NEHFA also wants a carryover provision. The common pool does not have a carryover allowance. Sector participants are eligible to carryover up to 10% of unused ACE from the prior fishing year, except for stocks managed under the US/Canada Agreement and GOM cod.

NEHFA has raised concerns that sector management is too complex and cost prohibitive. The PDT does not dispute that sector management presents additional complexity beyond that of the common pool and that there are associated costs. At least two existing sectors have offered financial and technical assistance to HA permit holders if they were to join their sector. Program complexity and administrative costs are issues the Committee could potentially address (e.g., a VMS exemption may reduce costs).

The core of the NEHFA proposal is to create a HA permit sub-ACL for cod. It may be problematic to modify the sector program to create a cod-only HA permit sector. As is, all multispecies permits have PSC based on applicable catch history of all allocated stocks, including cod. The HA vessels would need to be allowed the ability to request exemption from this requirement or create a specific provision allowing HA vessels to participate in a cod-only

sector (similar to the cod-specific sectors formed in the mid-2000s). The Committee would need to address how catch of other stocks (e.g., haddock, pollock) would be addressed if a handgear-only cod sector was permitted. Would a cod-only HA sector be able to harvest other stocks? Would any of the current common pool limits and rules apply?

Approach B: Split the common pool

The NEHFA has stated it does not seek to modify the existing common pool. Rather, it is interested in a new handgear-specific fishery, withdrawing the associated cod catch history of HA permits from the common pool. It is possible to require all HA permits be enrolled in a new handgear-specific common pool component. Establishing a gear-specific sub-component would be a novel approach for the Northeast multispecies fishery, which warrants careful consideration. The Committee would need to discuss whether to make such a new program voluntary or mandatory for all HA permits, including those currently enrolled in sectors.

Effectively removing the HA permit cod catch history from current programs could be accomplished by splitting the common pool into a "general" common pool component and a handgear-specific component with either a sub-annual catch limit (sub-ACL) or total allowable catch (TAC). This would require Council action. The Committee would need to address if creation of a handgear-specific common pool fishery would be established just for cod, as requested, or for all stocks primarily targeted by handgear (i.e., cod, haddock, white hake, and pollock). How would catch of other stocks be addressed? Would the handgear fishery harvest other stocks under the current common pool rules concurrent to a handgear specific cod fishery/sub-ACL.

If HA permit enrollment in a new common pool component is made optional, it is unclear how many HA permits holders would opt in. Of the 103 HA permits renewed for FY 2013, there were 22 unique HA permits actively fishing to date between sectors and the common pool. The NEHFA cites 10 current members within the organization, not all of whom are currently enrolled in the common pool.

NEHFA proposes that catch history only be used by HA permit holders and that an entity may only hold one HA permit. The constraints outlined do not currently exist and would require Council action. For example, requiring that HA-related catch history, either in a sector or modified common pool, be harvested only with handgear could be specifically addressed by the Committee as a regulatory provision. Similar constraints could be adopted through sector management plans. Constraints on permit sale would require Council action irrespective of if handgear operates in sectors or the common pool. These issues raise equity concerns with current HA permit holders who fish in sectors using other gears or make their contribution to a sector's ACE available to other gear types to harvest, or who are interested in selling their business on the open market. Currently, the PDT is unaware of how HA permit holders outside of NEHFA would react to this proposal. Permit holders enrolled in sectors may not want to participate in a handgear-specific common pool fishery.

If the Committee supports the concept of creating a handgear only fishery, it may want to address the NEHFA proposal request for closed area access, elimination of trimesters, carryover, and reporting requirement modifications. Some proposal components could be accomplished without creation of a common pool subcomponent, but would require Council action, such as changes to IVR reporting requirements and elimination of the need to carry a standard fish tote.

NMFS has indicated that monitoring the common pool in its current configuration is very resource intensive. Further subdivision would be very difficult to administer given the small amounts of quota involved, existing human and technical resources, and the timeframe to report and process catch data. Approach B would likely increase the NMFS resource requirements more than Approach A.

Table 1. Potential Council approaches relative to the NEHFA proposal.

	Approach A: Do not split the common pool		Approach B: Split the common pool
	Encourage sector membership	Modify the common pool	
Allow access to additional closed areas.	ç	ç	ç
Exempt sector vessels fishing with HA permits from the use of VMS.	ç		
Exempt sector vessels fishing with HA permits from the use of ASM.	ç		
Allow HA permits to enroll in a cod-only sector	ç		
Remove the requirement to have a standard fish tote onboard HA vessels.		ç	ç
Move to an annual rather than trimester catch limit system.		ç	ç
Allow HA catch history to be only used by vessels with HA permits	ç	ç	ç
Change IVR reporting requirements		ç	ç

Note: Check (ç) indicates Council action required.

Questions: Which approach (A, B, or C) would the Committee like to move forward with? Are there specific alternatives related to the NEHFA proposal that the Committee would like to develop further in Amendment 18? Which?

Amendment 18 Goals

Appendix V (p. 52) contains the Amendment 18 goals for the Committee's reference.

References

- NEFMC. 1999. Amendment 10 to the Northeast Multispecies Fishery Management Plan (Omnibus Amendment). Gloucester (MA): National Marine Fisheries Service in consultation with the MAFMC and NEFMC. 36 p.
- NEFMC. 2010. Amendment 15 to the Scallop Fishery Management Plan including a Final Environmental Impact Statement. Newburyport (MA): New England Fishery Management Council in consultation with the National Marine Fisheries Service and the Mid-Atlantic Fishery Management Council. 516 p.
- NMFS. 2010. How is the Potential Sector Contribution Calculated? Gloucester (MA): National Marine Fisheries Service Fisheries Statistics Office. 11 p.

DRAFT Discussion Document:

**Amendment 18
to the
Northeast Multispecies Fishery Management Plan**

**DRAFT
SECTION 4
ALTERNATIVES UNDER CONSIDERATION**

**Prepared by the
New England Fishery Management Council
in cooperation with the
National Marine Fisheries Service**

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4.0 ALTERNATIVES UNDER CONSIDERATION

4.1 ALTERNATIVES FOR SPLITTING GROUND FISH PERMITS OFF OF A SUITE OF LIMITED ACCESS PERMITS

4.1.1 Alternative 1: No Action

No action. Northeast Multispecies permits may not be split off of a suite of limited access permits.

4.1.2 Alternative 2: Permit Splitting

Northeast Multispecies permits may be split off of a suite of limited access permits.

4.1.3 Alternative 3: PSC Splitting

The PSC for any specific Northeast Multispecies stock may be split off of a suite of limited access permits.

4.2 ALTERNATIVES FOR MODIFYING VESSEL UPGRADE RESTRICTIONS

4.2.1 Alternative 1: No Action

No action. There are no changes to vessel upgrade restrictions.

4.2.2 Alternative 2: Modifying Vessel Upgrade Restrictions

(To be developed).

4.3 ALTERNATIVES FOR ESTABLISHING ACCUMULATION LIMITS

4.3.1 Alternatives for a Regulatory Definition of a Non-profit Permit Bank

4.3.1.1 Alternative 1: No Action

No action. Do not define a non-profit permit bank.

4.3.1.2 Alternative 2: Defining a Non-profit Permit Bank

An entity shall be considered a non-profit permit bank if the following criteria are met:

1. It is a partnership, voluntary association, or other non-profit entity established under the laws of the U.S.;
2. It is eligible to hold Northeast Multispecies permits/MRIs;
3. It maintains transparent qualification criteria and application processes for the distribution of ACE to fishermen;

4. It must distribute ACE to at least three distinct business entities in any fishing year;
5. ACE must be leased at below market values.

Non-profit permit banks shall not be allocated ACE, but must join a groundfish sector.

Non-profit permit banks shall comply with existing and relevant leasing and transfer regulations that currently apply to sectors and individual permit-holders including lease reporting protocols, size-class or baseline restrictions, etc.

Non-profit permit banks will be approved annually by the National Marine Fisheries Service provided a complete application has been submitted by agreed upon deadlines. NMFS will ensure that all requirements listed above are fully and satisfactorily met prior to approval.

Non-profit permit banks shall submit a performance report annually to the National Marine Fisheries service, which shall be a public document. These reports shall explain how the above qualification criteria were met.

4.3.2 Alternatives for Limiting Holdings of Fishing Access Privileges

4.3.2.1 Alternatives for Limiting the Holdings of Individual Permit Banks

4.3.2.1.1 Alternative 1: No Action

No action. Do not limit the holdings of permit banks, public or non-profit.

4.3.2.1.2 Alternative 2: Limiting the Holdings of Individual Permit Banks

NEFMC could choose one percentage within each of the following options, but any combination of options.

Option A:

For any single fishing year, no single permit bank, public or non-profit, shall hold more than the following percent of Northeast Multispecies permits. This includes permits issued to vessels and eligibilities in Confirmation of Permit History. Permit banks in existence prior to the control date (April 7, 2011) will be restricted to holding the number of permits held as of the control date, unless the following percentage translates to a greater number of permits.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Option B:

For any single fishing year, no single permit bank, public or non-profit, shall hold more than the following percent of the MRIs with associated PSC. Permit banks in existence prior to the control date (April 7, 2011) will be restricted to holding the number of MRIs with associated PSC held as of the control date, unless the following percentage translates to a greater number of permits.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Option C:

For any single fishing year, no single permit bank, public or non-profit, shall be assigned no more than the following percent of PSC associated with all Multispecies stocks. Permit banks in existence prior to the control date (April 7, 2011) will be restricted to being assigned PSC by their permit/MRI holdings as of the control date, unless the following percentage translates to a greater amount of stock-wide PSC.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Option D:

For any single fishing year, no single permit bank, public or non-profit, shall be assigned no more than the following percent of a stock-specific PSC. Permit banks in existence prior to the control date (April 7, 2011) will be restricted to being assigned PSC by their permit/MRI holdings as of the control date, unless the following percentage translates to a greater amount of stock-specific PSC.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

4.3.2.1 Alternatives for limiting the holdings of permit banks collectively**4.3.2.1.1 Alternative 1: No Action**

No action. Do not limit the holdings of permit banks collectively.

4.3.2.1.2 Alternative 2: Limiting the holdings of individual permit banks

For any single fishing year, all permit banks, public and non-profit, shall hold no more than the following percent of Northeast Multispecies permits.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

4.3.2.2 Alternatives for limiting the holdings of entities other than permit banks**4.3.2.2.1 Alternative 1: No Action**

No action. Do not limit the holdings of entities other than permit banks.

4.3.2.2.2 Alternative 2: Limit the holdings of entities other than permit banks

NEFMC could choose one percentage within each of the following options, but any combination of options.

Option A:

For any single fishing year, no individual or business entity shall have ownership interest in more than the following percent of Northeast Multispecies permits. This includes permits issued to vessels and eligibilities in Confirmation of Permit History. Those individuals or business entities with an ownership interest in these permits prior to the control date (April 7, 2011) will be restricted to holding the number of permits held as of the control date, unless the following percentage translates to a greater number of permits.

- 1.) 5 percent
- 2.) Y percent
- 3.) Z percent

Option B:

For any single fishing year, no individual or business entity shall have ownership interest in more than the following percent of the MRIs with associated PSC. Those individuals or business entities with an ownership interest in these MRIs with associated PSC prior to the control date (April 7, 2011) will be restricted to holding the number of MRIs with associated PSC as of the control date, unless the following percentage translates to a greater number of MRIs with associated PSC.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Option C:

For any single fishing year, no individual or business entity shall be assigned no more than the following percent of the PSC associated with all Multispecies stocks. Those individuals or business entities holding permits/MRIs prior to the control date (April 7, 2011) will be restricted to being assigned PSC by their permit/MRI holdings as of the control date, unless the following percentage translates to a greater amount of stock-wide PSC.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Option D:

For any single fishing year, no individual or business entity shall be assigned no more than the following percent of a stock-specific PSC. Those individuals or business entities holding permits/MRIs prior to the control date (April 7, 2011) will be restricted to being assigned PSC by their permit/MRI holdings as of the control date, unless the following percentage translates to a greater amount of stock-specific PSC.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

4.3.2.3 Use of fishing access privileges

4.3.2.3.1 Alternative 1: No Action

No action. Do not limit the use of fishing access privileges.

4.3.2.3.2 Alternative 2: Limit the use of fishing access privileges

NEFMC could choose one percentage within each of the following options, but any combination of options.

Option A:

For any single fishing year, no individual or business entity shall harvest no more than the following percent of the stock-wide ACE. Those individuals or business entities holding permits/MRIs prior to the control date (April 7, 2011) will be restricted to harvesting the percent of ACE harvested as of the control date, unless the following percentage translates to a greater amount of stock-wide ACE.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Option B:

For any single fishing year, no individual or business entity shall harvest no more than the following percent of the stock-specific ACE. Those individuals or business entities holding permits/MRIs prior to the control date (April 7, 2011) will be restricted to harvesting the percent of ACE harvested as of the control date, unless the following percentage translates to a greater amount of stock-specific ACE.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Northeast Regional Proposal for a Vessel Baseline Simplification Amendment
New England Fishery Management Council Meeting
Hyannis, MA
September 24-26, 2013

Summary

Fishing vessel baseline specifications and upgrade restrictions have been used as a tool in many Northeast (NE) limited access fisheries to promote conservation of fish species by limiting potential increases in the harvest capacity of the fleet. Vessel upgrade restrictions were intended to control the potential increase in effort and catch that could occur if an individual vessel increased in size or horsepower and, therefore, to prevent unexpected increases in fishing mortality. For example, if a vessel were able to land more fish per day-at-sea (DAS) fished because of an increased size or horsepower, it could undermine the purpose of matching the total DAS allocation to a target Total Allowable Catch (TAC). In the case of hard quotas, a vessel's catch rate per trip could increase because of an upgrade, accelerating the rate the quota is taken and increasing the race to fish. However, since the time baseline specifications were adopted, many fisheries have implemented other effort controls and annual catch limits, which restrict effort and put a cap on total harvest. In addition, replacement and upgrade restrictions can be a costly and time-consuming administrative burden for both the industry and the Northeast Regional Office (NERO). It may be possible to simplify or eliminate certain baseline restrictions to reduce the administrative and cost burden to industry and NERO without adversely affecting stock rebuilding. NERO is proposing to take the lead on an omnibus amendment to all FMPs to simplify the baseline regulations. This action would be developed by NERO and adopted by the New England and Mid-Atlantic Councils, with implementation targeted for May 2015. NERO would like the Council's input on this proposed action and process.

Background

Vessel replacement restrictions were first implemented in the NE multispecies and Atlantic sea scallop fisheries in conjunction with the creation of limited access programs in 1994. NMFS also implemented similar restrictions in other fisheries in the years that followed and, in 1999, the omnibus Consistency Amendment expanded and standardized the upgrade restrictions to most Northeast limited access fisheries. Current regulations require a replacement vessel or an upgrade made to an existing vessel be within 10 percent of the size (length overall, net tonnage, and gross tonnage) and 20 percent of the horsepower, of the permit's baseline vessel. The baseline vessel is typically the first vessel issued a limited access permit for a specific fishery or, for fisheries that adopted baseline restrictions through the Consistency Amendment, the permitted vessel at the time the final rule became effective. Some vessels that hold multiple limited access permits have more than one baseline, which can complicate vessel replacements. As a rule, the most restrictive of the baselines is used to judge the approval of a replacement vessel in these situations, unless the permit holder chooses to relinquish the more restrictive permit. Permit holders may only upgrade their size and horsepower specifications once. For example, a vessel owner that has a 60-ft baseline length would be limited to upgrading to a vessel of up to 66 ft. If he were to move his permit to a 62-ft vessel for any reason, that would constitute his one-time upgrade and he would lose the ability to later upgrade to a vessel of 66 ft.

He would only be able to move his permit to a vessel of 62 ft or less, but would still be able to upgrade his horsepower by 20 percent.

The current baseline restrictions can be very complex and costly for both the industry and NERO. Permit holders must have documentation from the U.S. Coast Guard or a marine surveyor to verify their vessel specifications for a replacement application. This is often an additional cost, if the vessel owner does not have the documentation on hand. Some permit holders hire brokerage firms to help them research the replacement history of their vessel and navigate the replacement process. In addition, not all baseline specifications are effective at controlling capacity and some can be more easily circumvented than others. The complexity and limitations of the current baseline restrictions may be an unnecessary burden, in light of newer effort and mortality controls that control mortality. It may be possible to simplify these restrictions without compromising FMP goals of conservation and fleet diversity.

In 2011, the Northeast Regional Coordinating Committee (NRCC) formed a working group to examine potential options to revise this vessel baseline system. The workgroup developed a white paper exploring the history of vessel baseline upgrade restrictions and possible modifications (Attachment A). The workgroup found that changes to the vessel baseline system may be warranted and recommended that NMFS publish an Advanced Notice of Proposed Rulemaking (ANPR, Attachment B) to solicit public comments on a range of potential changes to vessel baseline measures. An ANPR was published on October 5, 2011, and collected public comments through December 5, 2011. The public comments that were received ran the full spectrum, from supporting maintaining the current system to supporting removing it entirely, and everywhere in between (public comments are summarized in Attachment C). Many commenters expressed concern that the action would unintentionally increase consolidation in the fleet. The NRCC and baseline workgroup also shared this concern. Many commenters thought that the baseline restrictions have helped to preserve a diverse fleet, in the absence of a more formal fleet vision and measures. The baseline workgroup also raised concerns that other management bodies, such as the Atlantic States Marine Fisheries Commission (ASMFC), may have come to rely on Federal baseline restrictions to limit capacity in their managed fisheries.

After review of public comments and further consultation with the NRCC, NERO is proposing to take the lead to develop an omnibus amendment to revise the current baseline restrictions. If both Councils support this action, NERO staff would begin development of an omnibus amendment and environmental assessment or other appropriate NEPA analysis. NERO would develop the amendment in consultation with both Councils and the ASMFC, to be adopted by both Councils at a later date. The purpose of this action would be to reduce the administrative burden and to simplify and make more efficient the replacement process, for vessel owners and NMFS, while having minimal impact on the diversity of the fleet or the overall harvest capacity of any particular permit.

Proposed Action

1. To eliminate both gross and net tonnage from upgrade restrictions:

The rationale for proposing these two measures is that tonnages are considered the most variable of vessel baseline specifications. There is more than one acceptable method of determining tonnages, and the tonnages of a vessel can vary significantly depending on whether an exact measurement or simplified calculation is used. Net tonnage limits can also be circumvented by modifying internal bulkheads. Tonnage specification limits have also been a concern for owners of vessels built outside of the United States that are determined to be under 5 net tons for import purposes. Documenting tonnages can be costly for a vessel owner, who may have to hire a marine technician to survey the vessel, and for NMFS to review and verify.

Given the uncertainty associated with accurately assessing tonnage restrictions, removing the limit on tonnages, while maintaining limits on length and horsepower, should have little to no impact on a permit's harvesting capacity. Some monkfish permits were initially based on vessel tonnage, but eliminating the tonnage restrictions would not change these already established permits. Similarly, volume restrictions that were recently implemented for the Atlantic mackerel fishery would not be affected by this action.

2. To remove the one-time upgrade restriction:

Eliminating the one-time upgrade restriction would provide more flexibility for the fishing industry. Some vessel owners have been constrained by this requirement because they did not maximize their one-time upgrade, either due to cost or availability, or other reasons and have since been unable to further upgrade the vessel. Eliminating this one-time upgrade restriction would be more fair to the industry, while having little to no impact on the overall harvesting capacity of a permit.

The one-time upgrade restriction is also an administrative burden for NMFS. In order to determine if a vessel is eligible for an upgrade, NERO staff must research the history of permit, including all previous vessel replacements and upgrades, in order to determine whether the one-time upgrade has been used. This can delay the processing of a vessel replacement request and require NERO staff to generate baseline letters to document these limitations for the vessel owner or prospective buyer. With this restriction removed, an owner or prospective buyer could easily determine whether a vessel fits within his upgrade specification limits by simply knowing the vessel's baseline. NMFS may even be able to post this information online for easy access by permit holders looking to upgrade or purchase a vessel.

Other Alternatives

The baseline working group and NMFS staff looked at other potential changes to baseline restrictions as well. The working group looked at vessel length, but this is the measure that is typically considered when discussing vessel size and the diversity of the fishing fleet. Horsepower is somewhat malleable as a baseline specification, because engines can be adjusted before and after inspection. And modern environmental regulations may limit the availability of

engines in a certain range to meet a baseline limit. However, engine horsepower is a real measure of fishing capacity in some fisheries, particularly dredge fisheries, and this restriction may still be necessary to limit harvest capacity. Given this, NERO is not recommending changes to these specifications. The proposed action and these other alternatives are discussed in more detail in the baseline workgroup white paper (Attachment A).

Proposed Process and Timeline

August-September 2013 Council meetings	NERO staff present plan to both Councils
October-November 2013	NERO staff gather input from species committees, as requested
November 2013-March 2014	Analyze alternatives and draft amendment document
March-April 2014	Present draft amendment to species committees, if needed
April 2014 Council meetings	Present draft amendment to Councils for adoption
June 2014 Council meetings	Hold public hearings in conjunction with Council meetings
August-September 2014 Council meetings	Final Council approval of amendment document
September 2014-February 2015	Proposed and Final rulemaking
Final rule effective with start of the permit year (May 1, 2015).	

Questions for the Council to Consider

- Does the Council wish to have its species committees provide input to this action prior to NMFS drafting the amendment?
- Does the Council wish to have its species review the draft amendment prior to the Council?
- If a species committee is not scheduled to meet during the proposed 2-month window, should the amendment be delayed?
- How should any proposed changes to the document be reconciled between the two Councils? Would the spring 2014 NRCC meeting be an appropriate forum?

Baseline Working Group
White Paper
Evaluating Options to Simplify Vessel Baseline, Upgrade, and Replacement
Restrictions
October 18, 2011

Joint Project with Partners from the National Marine Fisheries Service (NMFS) Northeast Regional Office, New England Fishery Management Council, Mid-Atlantic Fishery Management Council, and Atlantic States Marine Fisheries Commission

Abstract

The establishment of limited access fisheries in the Northeast has been accompanied by strict limits on vessel upgrades and replacements. While the 1999 Consistency Amendment made such restrictions consistent across fisheries to ensure that effort did not increase significantly, the resulting upgrade and replacement process is complex and can be burdensome for industry members and administrators. While the original intent of such restrictions was to limit increases in harvest capacity in limited access fisheries, management programs have evolved and there are currently many other effort controls that may be limiting effort more effectively. With the development of more effective input controls such as trip limits, gear restrictions, closed areas and others; as well as output controls such as annual catch limits, accountability measures, and catch share programs, the vessel upgrade and replacement restrictions could be simplified to reduce burden on fishing communities without compromising Northeast fish stocks. Options to simplify vessel upgrade and replacement restrictions could include: Eliminating tonnages from vessel baseline regulations; eliminating the one-time upgrade provision; changing from a system of fixed upgrades to a system of size classes; removing baseline upgrade restrictions for vessels under 30 ft; or removing the restrictions entirely. While some preliminary work has been done to develop these options, there are likely other options that should be considered. The baseline working group recommends that the Northeast Region Coordinating Council set simplifying vessel upgrade and replacement restrictions as a priority and form a joint New England and Mid-Atlantic Council committee to explore and analyze potential options.

Background

Limited Access Fisheries

The Mid-Atlantic Fishery Management Council (MAFMC) developed the first limited entry program in 1977 for the surfclam/quahog fishery, which only allowed replacement by a vessel of “substantially similar capacity”. A limited entry program for the summer flounder fishery was implemented in 1992, which prohibited any vessel upgrades and only allowed replacements if a vessel was documented as unseaworthy. As more limited access programs were implemented, vessel upgrade and replacement restrictions were made more flexible. Based on recommendations from fishing industry members, when the New England Fishery Management Council (NEFMC) implemented a moratorium program for the Northeast (NE) multispecies fishery in Amendment 5 to the Fishery Management Plan (FMP) and for the Atlantic sea scallop (scallop) fishery in Amendment 4 to the FMP, the NEFMC decided to allow vessel upgrades and replacements, but restrict the size and horsepower of any replacement vessel, or modifications to the current vessel, based on the specifications of a baseline vessel. The definition of a baseline vessel varied in each limited access fishery, but was typically the first vessel issued the limited access permit in that fishery at the time the permit was issued. After the baseline vessel has been established, vessel owners are restricted in changing the specifications of their vessel. When upgrading or replacing a vessel, the vessel can only increase up to 10 percent above the baseline vessel’s length overall (LOA), gross registered tonnage (GRT), and net tonnage (NT); and/or up to 20 percent above the baseline vessel’s horsepower (HP). The size and horsepower specifications associated with a vessel permit can only be upgraded once, although the vessel size characteristics (LOA, GRT, NT) and HP can be upgraded at different times. When baseline

vessel specifications for limited access vessels were established, vessel owners were allowed to submit documentation correcting the vessel baseline specifications if they were incorrect.

As more limited access programs were implemented, vessel upgrade and replacement restrictions became increasingly varied. The MAFMC used the strict summer flounder vessel upgrade and replacement restrictions as a guide when developing the scup, Longfin squid/butterfish, and *Illex* squid moratorium programs. Limited access scup, Longfin squid/butterfish, and *Illex* vessel owners were limited to vessel replacements if the vessel was documented to be unseaworthy and weren't allowed any vessel upgrades. However, as the black sea bass fishery limited access program was being developed, industry members urged the MAFMC to adopt some of the more flexible measures regarding vessel upgrades and replacements that had been adopted in New England. Amendment 10 to the summer flounder FMP also resulted in increasing flexibility in vessel upgrade restrictions.

Development of the 1999 Consistency Amendment

While the goal of requiring baseline specifications and limiting vessel upgrades and replacements was to control fishing effort, prior to the 1999 Consistency Amendment, the regulations were different across fisheries managed by the NEFMC and MAFMC. There were 1,261 vessels with one limited access permit and 2,506 vessels with multiple limited access permits in the 1997-1998 fishing year. The upgrade restrictions became confusing for fishing industry members with more than one limited access permit, because each permit had the potential to have different vessel upgrade regulations apply. In response, the 1999 Consistency Amendment was developed jointly by the NEFMC and MAFMC to standardize baselines, and vessel upgrade and replacement restrictions across all limited access fisheries.

The 1999 Consistency Amendment was implemented for the following FMPs:

- Summer Flounder, Scup, Black Sea Bass
- Northeast Multispecies
- Atlantic Mackerel, Squid, and Butterfish
- Atlantic Surf Clam/Ocean Quahog
- Atlantic Sea Scallop
- American Lobster

While baseline vessel specifications for limited access vessels were already in place for the summer flounder, black sea bass, Northeast multispecies, surfclam/quahog, and scallop fisheries, the Longfin squid/butterfish, *Illex*, and scup fisheries implemented vessel baseline specifications through the 1999 Consistency Amendment. The baseline vessel specifications for Longfin squid, butterfish, *Illex*, and scup were set as the specifications of permitted vessel as of the date the 1999 Consistency Amendment was implemented. In some cases, this resulted in a single vessel with permits for multiple fisheries having more than one baseline. In that situation, the most restrictive combination of baseline specifications applied, unless the vessel owner chose to relinquish permanently the permit with the more restrictive baseline(s). As a part of the Amendment, baselines were eliminated for American lobster permits. While American lobster permits can only be replaced or upgraded once a year, similar to the other limited access permits, they are not held to the same upgrade restrictions and have no restrictions on increasing vessel

size and horsepower. However, vessels issued an American lobster permit and other limited access permits are subject to the vessel upgrade restrictions of the other permits on the vessel.

Limiting fishing effort through upgrade restrictions

The main reason for implementing strict vessel upgrade regulations in the surfclam/quahog fishery was to control fishing effort and limit the expansion of the fishing fleet. While the original upgrade restrictions only allowed replacements by a vessel of a “substantial similar capacity,” the 1999 Consistency Amendment aimed to limit permitting complications associated with commercial vessels that have multiple limited access permits whenever they are bought, sold, transferred, or upgraded. It also simplified regulations for vessel replacements, permit transfers, and vessel upgrades and made them less restrictive to help to facilitate business transactions by making the regulations consistent and less confusing. Such flexibility in upgrade restrictions still controlled fishing effort, while allowing for more flexibility for industry members to make improvements to their vessels. Vessel upgrade restrictions were also expected to provide some biological benefit to fishery stocks because vessels were limited in increasing fishing capacity through increasing horsepower and vessel size. Such limits were expected to have positive impacts on overfished stocks and aid in the success of rebuilding programs by limiting future fishing mortality through vessel upgrade restrictions.

Current vessel upgrade and replacement restrictions

Since the implementation of the Consistency Amendment, vessel upgrade and replacement restrictions have been implemented in other limited access fisheries, such as monkfish and Atlantic herring. They are also likely to be implemented in the upcoming approved limited access mackerel program. In 2011, there are currently 743 vessels with one limited access permits and 1359 vessels with multiple limited access permits that are affected by the baseline requirements. The limited access mackerel program is expected to add another 400 vessels that will be subject to the same requirements, plus an additional hold certification baseline¹.

Despite the Consistency Amendment’s efforts to streamline the implementation process, upgrade and replacement restrictions, including establishing a baseline vessel, have become complex over the years. For instance, the vessel that currently holds a limited access permit may not be the baseline vessel that was established for that permit. If a vessel was issued a NE multispecies permit in 1994 and then did a vessel replacement, the old “original” vessel that was first issued the multispecies permit would remain the baseline vessel. If the permit was transferred several times, as NMFS allows permits to be transferred once a year, or the size specifications (LOA, GRT, and NT) and horsepower were upgraded at different times, permit histories become even more intricate.

Additionally, having a vessel with multiple permits may result in a suite of permits with multiple baseline vessels if the limited access fisheries were established at different times. For instance, if

¹ Amendment 11 to the Mackerel, Squid, Butterfish FMP, which will implement a limited access program in the mackerel fishery, has been approved by the MAFMC. A proposed rule was published on August 1, 2011 (76 FR 45742) and included a provision that will restrict increases in hold capacity for Tier 1 and 2 permitted vessels to 10 percent above the baseline hold capacity.

a vessel was issued a NE multispecies permit in 1994, did a vessel replacement in 1998, and the replacement vessel was subsequently issued a limited access black sea bass permit, dual baselines were created. Since the two permits are tied together as a suite, the more restrictive (i.e., the smaller) specification of these two baselines becomes the determining factor for any future vessel replacement for the two permits.

Though the vessel size specifications and HP may be upgraded independent of each other, the size specifications are tied together and must be upgraded together or the vessel owner loses the ability to upgrade any of the size specifications in the future. For example, if a vessel replacement uses its full 10-percent upgrade in LOA, but the GRT and NT remain static, the GRT and NT cannot be increased in the future as these three specifications are tied together and increasing the LOA exhausted the one-time size upgrade allowed. Also, if an upgrade is not used to its full potential (i.e., 10 or 20 percent), the upgrade amount becomes the new maximum allowed for all prospective replacements and the ability to utilize the full upgrade allowance in future replacements is lost. For example, if during a vessel replacement, the HP of a vessel is upgraded but the full 20-percent allowance is not utilized, the upgrade becomes locked and no further increase in HP is permitted.

Because permits in the Northeast region are issued to vessels, they cannot be bought or sold separately from the vessel. In cases where a vessel owner wants to sell a permit but retain the vessel, the owner will often transfer the permit to a skiff, and then sell the skiff and permit together. In these cases, the owner must provide documentation from a disinterested third party of the length, tonnages, and HP of the skiff in order to comply with vessel replacement regulations. The new owner can then transfer the permit from the skiff onto a larger fishing vessel. In other cases, a permit holder may transfer a permit to a skiff in order to lease out the days-at-sea (DAS) associated with the permit without the expense of maintaining a larger vessel. In 2007, NMFS determined that the number of replacements that used such an intermediate vessel had been increasing, and that these transfers were placing a financial and time burden on vessel owners and an administrative burden on NMFS staff. Analysis of vessel trip reports showed the smallest vessel to fish under a limited access permit (excluding lobster) was 17 feet. Therefore, NMFS adopted a policy that recognized a replacement vessel under 17 feet as a non-fishing skiff, which would not need additional documentation of the vessel size or HP.

In addition, if a vessel has a NE multispecies permit, the multispecies DAS program has leasing/transfer restrictions that are based on the LOA and HP of the permit's baseline vessel. The NE multispecies DAS leasing/transfer program utilizes the baseline specifications that were associated with the vessel as of January 29, 2004 (date of the proposed rule for Amendment 13 to the NE multispecies FMP). If, for some reason, a correction was made after that date, under no circumstance would the leasing baseline be allowed to be changed. This means that a vessel could potentially have a leasing baseline that is different from the baseline specifications used for determining eligibility for a vessel replacement.

Industry Costs and Burden of Vessel Upgrade Restrictions

The analysis for the Consistency Amendment assumed only benefits from implementing consistent regulations for establishing vessel baselines, vessel upgrades, and replacement restrictions across multiple limited access fisheries, and analysis for the Amendment showed that consistent regulations prevented overcapitalization at very little to no cost to the fishing industry. The Amendment was thought to be a net benefit for fishing industry because the upgrade restrictions provided the opportunity for slight increases in size and HP (more than the summer flounder, Longfin squid, butterfish, *Illex*, and scup limited access programs had originally implemented). Additionally, the Amendment provided some flexibility to industry members seeking new vessels, while allowing only a limited increase in fishing capacity. The Amendment aimed to simplify regulations and make it easier for vessel owners to upgrade their vessels and for NMFS staff to process vessel upgrades and replacements.

Since the implementation of the program, the realized costs have become greater than originally expected. The search for a suitable replacement vessel within allowed upgrades can often be difficult and can take a very long time. Because manufactures often make vessels of only certain types and sizes, upgrades are denied when the replacement vessel is outside the upgrade value, even if the difference is a matter of inches. Similarly, modern marine engines are manufactured to meet more stringent emissions standards and HP ratings may not be as adjustable as they were in the past. It can be challenging to find a suitable replacement engine without violating the horsepower upgrade limits.

It has been estimated that at least 300 vessels would be required to get vessel specifications (size or horsepower) verified by a marine surveyor annually, as required by the current regulations. Marine surveys for either size or horsepower are estimated to cost at least \$375 each. In addition to obtaining marine surveys, vessel owners use marine documentation services to assist with finding a vessel to purchase, requesting the vessel baseline documentation from the seller or from NMFS, and completing the paperwork to complete the upgrade or replacement. Because of the complexity of the entire process, vessel owners often hire a marine documentation service, which is an additional cost to obtaining a marine survey and additional time to go through the vessel replacement process. Analysis in the 1999 Consistency Amendment assumed that vessel owners would no longer need to hire marine documentation specialists to assist with vessel replacement and upgrade transactions because the vessel upgrade and replacement process was intended to become simpler and easier to understand. However, anecdotal information indicates that more vessel owners than ever before are using marine documentation services. Although the costs of such documentation services have not been analyzed to date, they are an additional cost burden on industry members.

In addition, a vessel may have had multiple owners since the fishery became limited access and the baseline was established. Without meticulous documentation, this makes it especially difficult for the current owner to know if an upgrade has been used for size or HP, what corrections have been made to a baseline, or what other decisions have been made in the past regarding a vessel's baseline. Therefore, industry members and marine documentation services regularly request baseline information from NMFS prior to purchasing or selling a vessel. The process to submit a baseline request, and for NMFS to complete it, may take several weeks given the number of such requests and the complexities of determining baselines for vessels with

multiple limited access permits. The processing time to answer such requests for baseline information has the potential to delay business decisions the buyer or seller must make.

Implementation burden of vessel upgrade restrictions

Baseline requirements have also become a burden on NMFS to administer. Requests for documentation on baseline vessel specifications have become so common that NMFS has staff dedicated to drafting these letters. In 2009 and 2010, NMFS processed approximately 250 and 150 baseline requests, respectively. In 2009, NMFS experienced a significant increase in requests due to the implementation of sectors in the NE multispecies fishery. So far in 2011, NMFS has already processed 140 baseline requests. Processing time to complete an individual request can vary anywhere from 2 days to several weeks, depending on the request, since each request is unique due to the potential complexity of the permit suite and transfer histories associated with the permits. So far in 2011, the average processing time has been 11 days, with 1 day being the shortest and 32 days the longest. NMFS also periodically receives baseline correction requests and exemptions from the baseline provisions, which can take several weeks or longer to process.

Once a vessel owner has decided to replace a vessel, a replacement request is submitted to NMFS. There are numerous vessel replacement provisions and processing steps to accomplish such a replacement. The baseline component of the replacement process is very similar to the baseline requests process in that tracking a vessel's baseline information is often time consuming and complex. This work is necessary to determine if a vessel upgrade has already been used or if replacement vessel is within the allowable size and HP allowances. Vessel replacements typically take up to 30 days to process, provided the application is complete. If an application is not complete, the replacement can take considerably longer, depending on the applicant's response time.

At the time of the Consistency Amendment, it was identified that a vessel replacement involved over fifty discrete steps pertaining to the various replacement provisions dealing with vessel size and horsepower upgrades, vessel ownership, and vessel condition. While the Consistency Amendment standardized these provisions, the size and horsepower upgrades and baseline history remains a substantial administrative burden on NMFS.

Alternatives to control fishing effort and harvest capacity

Since the Consistency Amendment, additional input controls have been put into place that limit fishing effort and harvesting capacity, preserve fish stocks, and ensure the success of rebuilding programs. While some input controls such as DAS and trip limits were in place in 1999, additional effort control measures across different fisheries, implemented with rebuilding programs, have contributed to improving the status of Northeast fish stocks. When the Consistency Amendment was finalized, 24 out of 49 stocks in the Northeast (NEFMC and MAFMC managed fisheries) were considered overfished. In the 2010 Status of the Fisheries Report to Congress, 16 out of 48 stocks are considered overfished. While it is difficult to determine which particular measures of a rebuilding program cause a fishery to rebound, it can be assumed that input controls on harvest capacity have played some role in decreasing the number of overfished stocks in the Northeast.

In addition, with the reauthorization of the Magnuson-Stevens Act in 2007 and the implementation of annual catch limits (ACL) and accountability measures (AM) in the majority of Northeast fisheries, NMFS and the Councils are turning more towards output controls to ensure healthy fish stocks and thriving fishing communities. Output controls, such as ACLs, AMs and catch share fisheries may be more effective than stringent vessel upgrade restrictions. As more input and output controls are being developed by the Councils across various fisheries, there may be opportunities for vessel upgrade restrictions to be simplified without compromising fish stocks and fleet diversity. Potential alternatives for controlling fishing capacity and preserving fleet diversity include trip limits, DAS, catch share programs (individual fishing quotas), ownership caps, permit banks, gear restrictions, etc. (Table 2).

Trip Limits as an Effort Control

Trip limits have been used as an effort control in limited access and open access fisheries. With trip limits in place, vessels are often limited in the amount of fish they can catch, regardless of vessel size or HP. Therefore, a small vessel is held to the same landing limit as a larger vessel. Two fisheries have linked vessel size (e.g., permit type) with landing limits. In the NE multispecies fishery, small vessel category permits must be on a vessel 30 ft or less in length, and are allowed a much smaller landing limit of three key species (i.e., cod, haddock, and yellowtail flounder) than vessels with a DAS or a limited access handgear permit. Similarly, in the monkfish fishery, there are two permit categories in which vessels less than 51 GRT have a lower landing limit than vessels without a size restriction. In the Atlantic sea scallop fishery, trip limits on access area trips work in conjunction with HP upgrade restrictions to limit fishing capacity.

Although open-access fisheries such as those for the NE skate complex and spiny dogfish are not held to vessel upgrade restrictions, skates and spiny dogfish are often incidentally caught species and may be controlled by effort controls in other fisheries. While there aren't any trip limits in the summer flounder, scup, and black sea bass FMP, individual states often set trip limits to control fishing effort and how fast the quota is taken throughout the fishing year. Absent trip limits set by the states, baselines may be the only effort control in such fisheries outside of annual catch limits (ACLs).

Days-at-Sea (DAS)

There are 4 fisheries that have DAS as an effort control: NE multispecies; limited access scallops; monkfish; and to some extent, skate. DAS are allocated to an individual permit and allow a vessel a specific number days in a year to fish. Because some vessels may choose to fish more or less than others, the groundfish fishery has a leasing program that allows the temporary transfer of DAS from one permit to another. Traditionally, baseline upgrade rules have prevented larger size vessels from acquiring DAS from smaller vessels. That is, vessels were only able to lease their DAS to other vessels that were 10-percent larger in size or less, and 20-percent larger in HP or less. However, with the implementation of sectors, exemptions have been given to allow vessels to temporarily transfer DAS to any size vessel; the baseline restrictions remain in place for vessels in the common pool.

Gear Restrictions

Three fisheries use gear restrictions to control effort: red crab; surfclam/quahog; and American lobster. Red crab also has trip limits in combination with trap limits. In the surfclam/quahog fishery, individual entities are allocated a certain number of trap tags, where each tag is equal to a number of bushels, and subsequently to a number of cages in which product is landed. The number of tags allocated to the fishery as a whole is equal to a certain number of cages, and therefore controls catch. While the red crab and Maine mahogany quahog fisheries have vessel upgrade restrictions and baseline specifications, the lobster fishery does not and fishing effort is controlled by trap limits alone.

Ownership Caps

While vessel upgrade restrictions were originally put in place to control overharvest, it is also believed that such restrictions can maintain fleet diversity and prevent consolidation to some degree. Other arguments have been made that implementing ownership caps, especially in catch share fisheries, can have the same effect. Some fisheries already have ownership cap measures to prevent consolidation of allocation, regardless of vessel size. In the tilefish fishery, an individual cannot own more than 49% of the total allowable landings (TAL). Both the limited access and limited access general category scallop fisheries have ownership caps. In the limited access general category scallop fishery, no single person or entity is allowed to have an ownership interest in more than 5% of the annual allocation, and no more than 2.5% may be allocated to an individual vessel. In the limited access scallop fishery, one person cannot have an ownership interest in more than 5% of the total number of permits in the entire fleet, regardless of whether the permit is in confirmation of permit history (CPH)² or on an active vessel. Although the NE multispecies and surfclam/quahog fisheries do not currently have ownership caps, they are being considered in future amendments to their respective fisheries management plans (FMPs).

Catch Share Fisheries

Catch share programs, while without trip limits, offer vessel owners flexibility to maximize their landings on a single trip because there is an allocation in place for a given vessel, (e.g., individual fishing quota (IFQ)), group of vessels (e.g., sectors), or vessel owner through an allocation system. While catch share fisheries such as NE multispecies, tilefish, limited access general category scallop open area trips, and surfclam/quahog do not have trip limits; they are held to an individual allocation so that the entire fleet stays within the allotted quota. In some cases, should an individual or group allocation be exhausted during a fishing year, individuals or groups are able to transfer allocation to other individuals or groups (through leasing programs), which may allow for additional trips.

Additional Effort Controls

²A Confirmation of Permit History (CPH) allows a vessel owner to retain permit eligibility in the event the vessel has been destroyed or sold but the owner retains the permit eligibility. The permit in CPH may then be placed on a vessel at a later date.

While trip limits, DAS, size caps, catch shares, and trap limits are some of the traditional effort control measures used in Northeast fisheries, there are a few additional effort controls that are unrelated to vessel size and HP restrictions. In the monkfish fishery, Category A and B vessels are not allowed to fish with more than 160 gillnets at any time while fishing on a DAS. Category C, D, F, and G vessels are not allowed to have more than 150 gillnets at any time while fishing on a DAS. In the limited access scallop fishery, on DAS trips where there is no trip limit, there is a cap on the number of people on board the vessels, and no automatic shucking machines are allowed. The limitation on crew size controls the amount of scallops the vessel is able to shuck and therefore controls the amount of catch per unit of effort or DAS.

Simplifying Vessel Baseline, Upgrade, and Replacement Restrictions

In light of these other measures to control harvest, it is possible that vessel baseline, upgrade, and replacement restrictions could be relaxed without adversely affecting the stocks. However, many factors need to be considered before moving forward with modifying or removing the restrictions. There are some arguments that relieving the vessel upgrade restriction would lead to increases in larger and more powerful vessels, which could have increased impacts on habitat or bycatch of non-target species. In addition, fishery management actions adopted by the coastal states through the Atlantic States Marine Fisheries Commission may rely on the baseline upgrade restrictions for federally permitted vessels to control harvest potential. Tilefish and lobster are examples of management programs without baseline programs and vessel upgrade restrictions. If more fisheries move towards catch share management similar to the tilefish fishery, there may be less of a need for strict vessel upgrade restrictions.

In many Northeast fisheries, the upgrade restriction may be one factor that is helping to preserve the small-vessel character of the fishing fleet. It is assumed that removing vessel baselines and relieving restrictions on vessel size and horsepower upgrades could lead to consolidation of the Northeast fishing fleet. While the vessel upgrade and replacement restrictions were originally put in place to control fishing effort, it may be that such restrictions are rarely functioning in this regard in current fisheries management programs. If this is the case, one of the primary roles of maintaining baselines and restricting vessel upgrades may be to preserve fleet diversity in the Northeast, rather than directly control fishing effort. However, there may be other ways to preserve diversity of the fleet and ensure the small-vessel character of the fleet, if that is the objective of the Councils. One example is the further use of ownership caps in fisheries managed under catch share programs. While an ownership cap may not prevent consolidation, it could be used in conjunction with other measure to preserve the small boat characteristic of the Northeast fishing fleet.

Options to Simplify Vessel Baseline, Upgrade, and Replacement Restrictions

A wide range of options could be considered as part of any action to change vessel baseline regulations. NMFS published an Advance Notice of Proposed Rulemaking on October 5, 2011 (76 FR 61661), to solicit public input on all of the options below, including suggestions for other changes to baseline regulations that are not specifically listed here, such as how to treat vessels that have multiple baselines and/or have already upgraded under the current system. While some of the potential pros and cons are highlighted here, these options have not yet been analyzed, and

NMFS is seeking comments on the feasibility of these options, the validity of the pros and cons, and suggestions for other options to simplify vessel upgrade restrictions.

- Eliminate tonnages from vessel baseline regulations. Tonnages are often considered the most malleable of baseline specifications. The GRT can vary significantly, depending on whether exact measurements or the simplified calculation method is used. Similarly, NT can be calculated based either on the GRT or from measurements of the vessel, and may be changed by modifying internal bulkheads. Tonnage has also been a concern for owners of vessels built outside of the United States that are determined to be under 5 net tons for import purposes.

Pros: Tonnages are the most malleable of the baseline specifications and can be changed by adding or removing bulkheads or by using different calculation methods. Eliminating tonnage as a specification removes the need to determine the width and depth of a vessel, which may be more difficult or expensive for a third party to document. Tonnages likely have less of an impact on fishing capacity than length or HP, though further analysis is necessary.

Cons: Could allow vessel owner to increase the size of the fish hold and land more fish on the same length vessel. Does not relieve the industry or agency from all of the burdens associated with the replacement process.

- Eliminate the one-time upgrade provision. This would eliminate the incentive to use as much of the available upgrade as possible to avoid “losing” some amount of future upgrade. The change could also simplify upgrade considerations by establishing the maximum specifications of any future vessel without needing to know whether any specification has already been upgraded. For example, under this option, if the permit on a vessel has a baseline HP specification of 300, and at some point is moved to a vessel with 340 HP, a future replacement vessel could still be up to 360 horsepower (20 percent greater than the 300-HPbaseline).

Pros: Allows more flexibility to choose a vessel without “losing” an upgrade allowance. Avoids “lost upgrade” that can result by upgrading length but not tonnage or vice versa. Makes researching baseline history simpler in that once the size of the baseline vessel is established, it is not necessary to know the sizes of all vessels the permit has been on since.

Cons: May disadvantage those who have already upgraded and been limited in choice of subsequent vessel. Could result in some increase in fishing capacity as vessels previously limited reach maximum upgrades.

- Change from a system of fixed upgrades to a system of size classes. The intent of this option would be to allow a vessel owner to move a permit to any vessel that fits within the specified size class. The specifics of this type of change, including the number and size of the size classes, have not been fully developed, and NMFS seeks comment to this end. Specific size classes could be based on vessel length, HP, or a combination. Such a system would simplify the vessel replacement considerations by making them uniform for all vessels in a particular size class rather than the current

system where potential upgrades are unique to each permit. However, determining specific size classes that are appropriate for all fisheries may be difficult. Tables 3 and 4 show the current distribution of vessel size (using length overall) and the potential number of vessels in 20 ft size bins.

Pros: Allows more flexibility to industry.

Cons: Complete change of the system would require significant analysis of potential impacts to the fleet and the environment. Also requires analysis to determine the appropriate size classes. Classes suitable for one fishery may not be the best fit for all fisheries.

- Remove baseline upgrade restrictions for vessels under 30 ft (9.1 m). An option to remove baseline upgrade restrictions for vessels of any size may be considered after further analysis. Thirty feet is one option, as it is an alternative that was previously considered by both Councils when this option was added to the Consistency Amendment. Comments from industry members were varied, with small-vessel owners commenting that restricting the ability for small boats to upgrade limits their ability to obtain a safer vessel, and that it was difficult to find a new boat within the upgrade limits. Opponents to the measure suggested that without the restrictions on vessel upgrades, owners of small vessels would move to larger vessels with more fishing capacity, which could have negative impacts on fish stocks. Ultimately, it was rejected by the MAFMC and the NEFMC could not reach a consensus and decided to take a closer look at eliminating vessel upgrades for vessels under 30 ft at a later date.

In March 2003, the topic was taken up again, and the MAFMC and NEFMC agreed by consensus that the issue should be evaluated by a working group; however, no such working group was formed as other more pressing management issues in these fisheries overtook the small-vessel exemption issue. The NMFS policy on eliminating the baseline requirement for vessels under 17 ft is similar in scope to this alternative and has been shown to reduce the time and effort to process permit transfers to skiffs for replacement transactions, and saved vessel owners the need to document to size of these non-fishing vessels.

If simplifying vessel baselines is taken up by the NEFMC and MAFMC as a priority, further analysis could show whether there is an alternate vessel size that is more appropriate as a cutoff for eliminating upgrade restrictions.

Pros: Simple and easily administered. Specifically benefits the smallest boats, giving them more flexibility.

Cons: Does not benefit a large portion of the fleet. Sets up a two tier system with different rules for different vessel, which could cause confusion. Vessels in this category could not be upgraded to more than 30 ft.

- Complete removal of upgrade restrictions. This would allow any vessel owner to move their permit to any other vessel. It provides maximum flexibility to the industry, but removes the baseline system's restrictions on fleet structure, and would likely have the largest impacts on the fishery and the environment.

Pros: Provides maximum flexibility to the fleet. This option is likely to greatly reduce the burden in time and cost to industry members and administrators.

Cons: Has potential for impact on fleet structure, the environment, fishing communities and ports, and fishing capacity. Eliminating vessel upgrade restrictions may cause increases in fishing effort and harvest in particular fisheries (e.g. horsepower upgrades in the scallop fishery). Eliminating vessel upgrade restrictions may impact fleet diversity, although further analysis must be completed to understand the nature of such changes.

- Other potential options to simplify vessel upgrade and replacement restrictions can and should be considered. Limits on time did not allow this working group to explore all possible options to simplifying vessel upgrade restrictions.

Conclusions and Recommendations:

Vessel upgrade and replacement restrictions are considered to be confusing and cost fishing industry members and NMFS administrators substantial amounts of time and resources. While such restrictions were originally put in place to prevent overharvesting, expansion of fishing effort, and overcapitalization in limited access fisheries, preliminary evidence has been presented here that shows that there are a variety of other management methods currently used to accomplish many of the same goals. While input controls such as trip limits are effective at controlling effort, recent implementation of output controls such as annual catch limits and catch share fisheries have the potential to be even more effective at limiting harvest and preventing consolidation. Considering the burden of upgrade restrictions on industry and administrators, and the expansion of output controls in fisheries management, it seems an appropriate time to consider simplifying the vessel upgrade and replacement restrictions. Although a number of considerations for simplifying the restrictions are presented here, there are likely other options that should be considered. An Advance Notice of Proposed Rulemaking was published on October 5, 2011, to alert the public to the possible changes to these programs and to solicit ideas and input. While the baseline working group members did not come to a consensus on recommendations, they did agree that any action to change vessel upgrade restrictions will require thorough analysis of the impacts.

Recommendations of the Baseline Working Group:

- If the NRCC would like to move forward with simplifying vessel upgrade restrictions and reducing the burden to the fishing industry and NMFS from such restrictions, they should make this task a priority for 2012.

- We recommend that the NRCC request a joint New England and Mid-Atlantic Council Committee similar to a fisheries management action team (FMAT) or plan development team (PDT) be developed to further analyze how vessel upgrade restrictions can be simplified and to expand on the work of this white paper.
- We recommend that the FMAT explore whether a joint Council action similar to the 1999 Omnibus Consistency Amendment is appropriate.
- Further analysis conducted by the FMAT may include:
 - Technical evaluation of fleet capacity over the life of the upgrade restriction;
 - Analysis of the need for upgrade restrictions in each FMP depending on the various input and output controls already in place (the need for such restrictions appears to vary across fisheries);
 - Whether vessel upgrade restrictions are still necessary for those fisheries who have implemented catch share management programs;
 - Whether harvest, fishing effort, capacity, and consolidation can be adequately controlled through methods other than vessel upgrade restrictions;
 - Potential bycatch and habitat impacts of larger vessels.

Members of the Baseline Working Group

Douglas Potts -*NMFS Northeast Regional Office*

Lindsey Feldman- *NMFS Northeast Regional Office*

Brett Alger- *NMFS Northeast Regional Office*

Ted Hawes- *NMFS Northeast Regional Office*

Anna Macan- *NMFS Northeast Regional Office*

Deirdre Boelke-*New England Fishery Management Council*

Richard Seagraves-*Mid-Atlantic Fishery Management Council*

Robert Beal-*Atlantic States Marine Fisheries Commission*

Barbara Rountree-*NMFS Northeast Fishery Science Center (Socio-Economics Branch)*

Table 1. Limited Access Fisheries and Implementation Dates

<u>Limited Access Fishery</u>	<u>Established Baseline Years</u>
Multispecies*	1994
Multispecies Hookgear	1996
Atlantic Sea Scallop**	1994
Red Crab	1999 or date the vessel was first issued LA permit
Monkfish	2000 or date the vessel was first issued LA permit
Atlantic Herring	2007 or date the vessel was first issued LA permit
Mackerel	TBD
Summer Flounder	March 22, 1999
Scup	March 22, 1999
Black Sea Bass	March 22, 1999
Illex	March 22, 1999
Longfin squid/Butterfish	March 22, 1999
Maine Mahogany Quahog	March 22, 1999

*All categories except for Multispecies Handgear A Category

**Excluding Limited Access General Category Scallop permit categories

Table 2. Effort controls in Northeast fisheries

Fishery	Trip Limits	DAS	Size Cap	Permit Categories Differentiated by Size	IFQ/PSC allocation	Ownership Cap	Trap Limits
Monkfish	Yes	Yes	No	No	No	No	
Red Crab	No	No	No	No	No	No	Yes
Surf Clam/Quahog	No	No	No	No	Yes	No-Am 15	No
Multispecies-Sector	No	No	No	Yes - Small Vessel Category	Yes	No-Am 18	n/a
Multispecies-Common Pool	Yes	Yes	No	Yes - Small Vessel Category	No	No-Am 18	n/a
Whiting	Yes	No	No	No	No	No	No
Skates	Yes	Yes-linked to Mults DAS	No	No	No	No	n/a
Herring	Yes (except for Category A and B vessels)	No	Yes - 165 ft.	No	No	No	n/a
Mackerel	Will be with Am. 11 (Except Tier 1)	No	Yes - 165 ft.	No	No	No	n/a
Squids	Yes (only incidental permits)	No	No	No	No	No	n/a
Butterfish	Yes	No	No	No	No	No	n/a
Scallop-Limited Access	Yes (only on access area trips)	Yes	No	No	No	Yes - one owner cannot have more than 5% of the # of vessels (CPH or active) in the entire fleet	n/a

APPENDIX II

Scallop-Limited Access General Category	Yes	No	No	No	Yes	Yes - 5% of the LAGC TAC (2.5% per vessel)	n/a
Spiny Dogfish	Yes	No - but tied to Mults DAS	No	No	No	No	n/a
Bluefish	No (Recreational Only)	No	No	No	No	No	n/a
Summer Flounder	No for Moratorium Fleet (Recreational Only)	No	No	No	No	No	n/a
Scup	Yes	No	No	No	No	No	n/a
Black Sea Bass	No for Moratorium Fleet	No	No	No	No	No	
Tilefish	Yes-for non-IFQ vessels	No	No	No	Yes	Yes-no more than 49% of the total TAL	n/a
Loyster	No	No	No	No	No	No	Yes

Table 3. Vessel size distribution (2010/2011) using length overall (LOA)

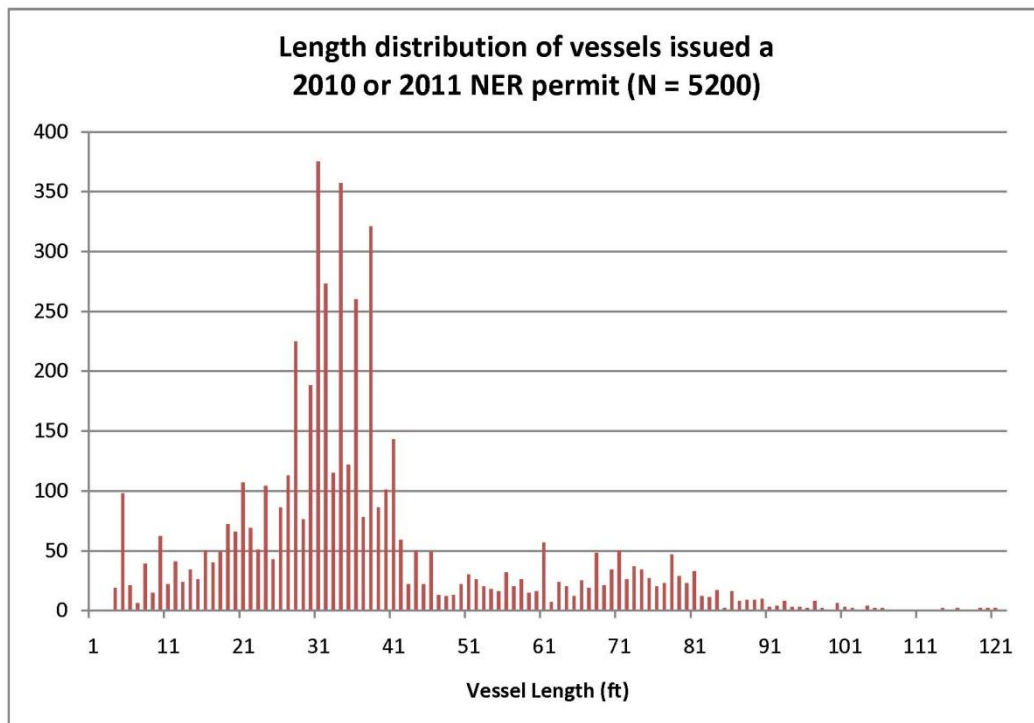
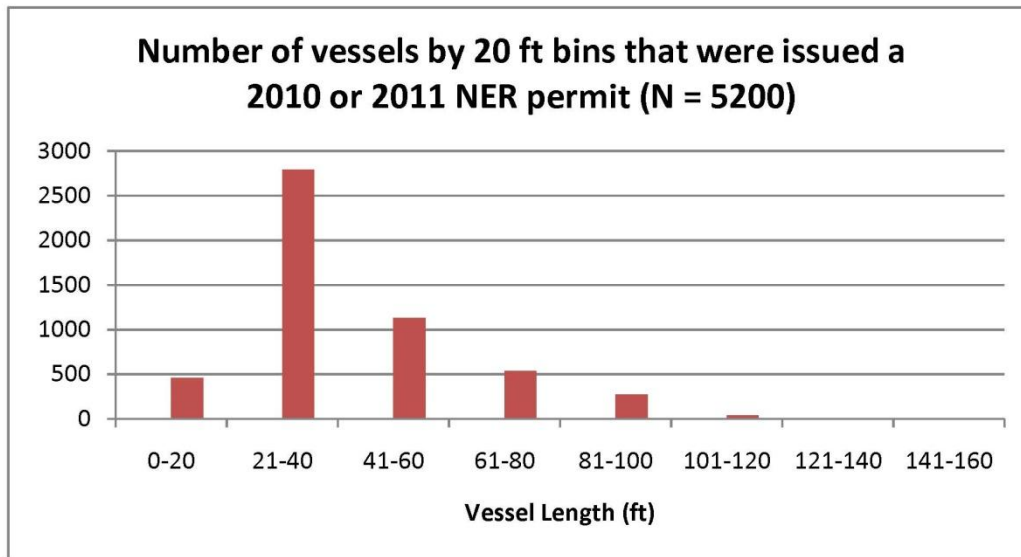


Table 4. Vessels classified in 20 ft bins as a potential option for simplifying upgrade and replacement restrictions using length overall (LOA).





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

OCT - 6 2011

Dear Permit Holder:

The National Marine Fisheries Service, in consultation with the Atlantic States Marine Fisheries Commission and the New England and Mid-Atlantic Fishery Management Councils, would like your input on potential changes to the vessel baseline regulations.

We have published the attached Advance Notice of Proposed Rulemaking to collect public comments on the current regulations that restrict the length, tonnage, and horsepower of a replacement fishing vessel and on possible changes to those regulations. The notice published in the *Federal Register* on October 5, 2011, and comments must be submitted by December 5, 2011. I have included a copy of the notice to give you more details about some of the potential changes and instructions for submitting comments.

We are at an early stage in this process, and there are no firm plans for if, how much, or when the vessel baseline regulations might change. I anticipate that any future regulatory change to the vessel baseline regulations would occur through an omnibus amendment jointly developed by the New England and Mid-Atlantic Councils. As potential changes are further developed, you will have additional opportunity for input into these potential changes through your Council.

Thank you for your time, and I hope you will consider sharing your thoughts on how to improve this program.

Sincerely,

Patricia A. Kurkul
Regional Administrator

Attachment



Federal Acquisition Regulation (FAR) 2.101 related to cost or pricing data. Included within the definition of “data other than certified cost or pricing data” is a statement that such data may include the identical types of data as “certified cost or pricing data,” but without the certification. Thus, the definitions of both “certified cost or pricing data” and “data other than certified cost or pricing data” refer to cost or pricing data.

C. Conclusion

The CAS Board believes the August 30, 2010 revisions to FAR 2.101 may cause some confusion over the applicability of CAS in view of the current wording of the (b)(15) FFP exemption. Consistent with Section 802, it has not been the CAS Board’s intent to apply CAS to FFP contracts or subcontracts awarded on the basis of adequate price competition where certified cost or pricing data was not obtained. Therefore, the CAS Board is considering a proposed change to the wording of the (b)(15) FFP exemption.

D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35, Subchapter I) does not apply to this rulemaking, because this rule imposes no additional paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The purpose of this proposed rule is to clarify the implementation of the “Streamlined Applicability of Cost Accounting Standards” at Section 802 of National Defense Authorization Act for Fiscal Year 2000.

E. Executive Order 12866, the Congressional Review Act, and the Regulatory Flexibility Act

This rule serves to clarify the elimination of certain administrative requirements associated with the application and administration of the Cost Accounting Standards by covered Government contractors and subcontractors, consistent with the provisions of “Streamlined Applicability of Cost Accounting Standards” at Section 802 of National Defense Authorization Act for Fiscal Year 2000. The economic impact on contractors and subcontractors is, therefore, expected to be minor. As a result, the CAS Board has determined that this proposed rule will not result in the promulgation of an “economically significant rule” under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be

required. Finally, this rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. Chapter 6.

List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Daniel I. Gordon,
Chair, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9903—CONTRACT COVERAGE

1. The authority citation for Part 9903 continues to read as follows:

Authority: Public Law 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

SUBPART 9903.2—CAS PROGRAM REQUIREMENTS

2. Section 9903.201–1 is amended by revising paragraph (b)(15) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

(15) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

* * * * *

[FR Doc. 2011–25623 Filed 10–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110907562–1598–01]

RIN 0648–BB40

Fisheries of the Northeastern United States; Changes to Vessel Replacement and Upgrade Provisions for Fishing Vessels Issued Limited Access Federal Fishery Permits

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS, in consultation with the Atlantic States Marine Fisheries Commission (Commission) and the New England and Mid-Atlantic Fishery Management Councils (Councils), is considering changes to the current system of regulations that limit the potential size of a replacement vessel. This advance notice of proposed rulemaking (ANPR) provides background information and requests public comment on the administrative and financial burdens of the current system, as well as on what type of changes would be appropriate to reduce that burden and the regulatory complexity without adversely affecting the fishery. NMFS will consider all recommendations received in response to this ANPR prior to any proposed rulemaking.

DATES: Comments must be received on or before December 5, 2011.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2011–0213, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, and then enter NOAA–NMFS–2011–0213 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- *Mail and hand delivery:* Submit written comments to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Vessel Upgrade ANPR.”

- *Fax:* (978) 281–9135.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected

information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:
 Douglas Potts, Fishery Policy Analyst,
 (978) 281-9341, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

Measures to limit the potential size of a replacement vessel were first implemented in the Northeast Region in 1994 in conjunction with the adoption of limited access permits in the Northeast Multispecies and Atlantic Scallop Fishery Management Plans (FMP). NMFS enacted these measures to promote conservation of the fish species by limiting the potential increase in fishing capacity of the fleet and thereby maintaining total fishing mortality within the requirements of the respective rebuilding schedule of the FMP. In the following years, NMFS adopted limited access permits for other fisheries in the Northeast, some of which included various restrictions on how a permitted vessel could be replaced. In 1999, an omnibus amendment (Consistency Amendment) to all the FMPs of the Councils was implemented (64 FR 8263, February 19, 1999) to expand and standardize the upgrade restrictions to encompass most of the limited access fisheries in the Northeast.

The current regulations restrict the size and horsepower of any replacement vessel, or modifications to the current vessel, based on the specifications of a baseline vessel. The baseline vessel for each limited access permit is typically the first vessel issued the limited access permit in that fishery at the time that permit was issued. In the case of fisheries that adopted baseline restrictions through the Consistency Amendment, the permitted vessel as of the date of the final rule's implementation sets the baseline. In some cases, this methodology resulted in a single vessel with permits for multiple fisheries having more than one baseline. In that situation, the most restrictive combination of baseline specifications applies, unless the vessel owner chooses to relinquish permanently the permit with the more restrictive baseline(s).

Current regulations allow vessel owners to increase (or upgrade) a specification either by moving the limited access permit to a new vessel or by modifying the current vessel, up to

10 percent above of the baseline vessel's length overall, gross registered tonnage, and net tonnage and up to 20 percent above the baseline vessel's horsepower. As a matter of NMFS policy, all calculated maximum upgrade values are rounded up to the next whole number. The baseline size and horsepower specifications associated with a permit can only be upgraded once, although the vessel size characteristics (length overall, gross registered tonnage, and net tonnage) and engine horsepower can be upgraded at different times. For example, a vessel owner looking to replace his current vessel, which has a baseline engine horsepower of 300, may, if the horsepower on that permit was not upgraded before, move it to a vessel with up to 360 horsepower (20 percent greater than the 300-horsepower baseline). If the owner opts for a new vessel with a 340-horsepower engine, that action counts as the one-time upgrade, and any future replacement vessel could not exceed that new 340-horsepower maximum limit. The baseline size characteristics can be upgraded through this same vessel replacement or used another time. However, since size characteristics are upgraded as a group, if the baseline length overall is upgraded but not the gross and net tonnages, the baseline tonnage specifications cannot be upgraded in the future.

When a vessel owner wants to move a limited access Federal fishery permit to a replacement vessel, as part of the application he must provide documentation from a third party to demonstrate that the length, gross registered tonnage, net tonnage, and horsepower are within the limits for that permit. Many vessels use the U.S. Coast Guard vessel documentation certificate for length and tonnages, although the documentation certificate should then reflect the length overall as required by NMFS regulation, rather than the typical registered length. Vessels that are not documented by the U.S. Coast Guard must provide other documentation for vessel size. Obtaining vessel specification documents may involve the time and expense of having the new vessel measured by a marine surveyor or other qualified individual. Engine horsepower documentation may require testing by a marine mechanic and documentation of the results on formal letterhead. On the other hand, all of this information might be routinely obtained for other purposes (e.g., for insurance coverage) and it could be a minimal additional cost to provide copies as part of a permit transfer application. The cost of documenting vessel

specifications has been previously estimated at \$375 for calculating the burden to the public under the requirements of the Paperwork Reduction Act. The full cost to the industry of this process is not clear, and the public is encouraged to submit comments on how much of a financial and time burden this process has been.

Some members of the fishing industry have reported that it can be difficult to find a suitable replacement vessel within allowed upgrades, especially for small boats. For example, a replacement for a 25-ft (7.6-m) baseline vessel could not exceed 28 ft (8.5 m), and manufacturers may not make vessels in the allowed size range that also meet other specific needs of a vessel owner. Similarly, modern marine engines are manufactured to meet more stringent emissions standards, and horsepower ratings may not be as adjustable as in the past without violating those limits. The safety of a vessel at sea, especially in adverse weather conditions, is affected by many factors, including the size of the vessel. NMFS encourages comments from the public on the availability of suitable replacement vessels, and the impact this has on safety at sea.

The primary justification for the adoption of upgrade restrictions was to control the potential increase in catch from each permitted vessel that could occur with increases in vessel size and horsepower and, therefore, to prevent unexpected increases in fishing mortality that could hinder a rebuilding program. Since the initial implementation of vessel upgrade and replacement restrictions, many fisheries have also adopted trip limits or other measures that control the potential harvest of a vessel beyond just restricting vessel size. In addition, the recent adoption in all fisheries of annual catch limits that cap total harvest in a given year may reduce the concern over excessive fishing mortality. In light of these other measures, it is possible that vessel baseline restrictions could be relaxed without adversely affecting stock rebuilding. However, the upgrade restriction is considered one factor that is helping to preserve the small vessel character of the fishing fleet in the Northeast region. Larger and more powerful vessels could also have increased impacts on habitat or bycatch of non-target species. Further, fishery management actions adopted by the coastal states through the Commission may rely on the baseline upgrade restrictions for federally permitted vessels to control harvest potential. These considerations will have to be more fully understood before a change

to current regulation can be implemented.

A wide range of options could be considered as part of any action to change vessel baseline regulations. NMFS would like public input on the full range of potential actions, including suggestions for other changes to baseline regulations that are not specifically listed in this announcement, such as how to treat vessels that have multiple baselines and/or have already upgraded under the current system. Potential changes may include one or more of the following.

1. *Eliminate tonnages from vessel baseline regulations.* The tonnages are often considered the most malleable of baseline specifications. The gross registered tonnage can vary significantly depending on whether exact measurements or the simplified calculation method is used. Similarly, net tonnage can be calculated based either on the gross tonnage or from measurements of the vessel, and may be changed by modifying internal bulkheads. Tonnage has also been a concern for owners of vessels built outside of the United States that are determined to be under 5 net tons (14.16 m³) for import purposes.

2. *Eliminate the one-time upgrade provision.* This would eliminate the incentive to use as much of the available upgrade as possible to avoid “losing” some amount of future upgrade. The change could also simplify upgrade considerations by establishing the

maximum specifications of any future vessel without needing to know whether any specification has already been upgraded. For example, under this option, if the permit on your vessel has a baseline horsepower specification of 300, and at some point moved to a vessel with 340 horsepower, a future replacement vessel could still be up to 360 horsepower (20 percent greater than the 300-horsepower baseline).

3. *Change from a system of fixed upgrades to a system of size classes.* This option would allow a vessel owner to move a permit to any vessel that fits within the specified size class. The specifics of this type of change, including the number and size of the size classes, have not been fully developed, and NMFS seeks comment to this end. Specific size classes could be based on vessel length, horsepower, or a combination. Such a system would simplify the vessel replacement considerations by making them uniform for all vessels in a particular size class rather than the current system where potential upgrades are unique to each permit. However, determining specific size classes that are appropriate for all fisheries may be difficult, and such a system might disadvantage vessels that are already at the upper limit of a size class.

4. *Remove baseline upgrade restrictions for vessels under 30 ft (9.1 m).* The Councils discussed this potential measure in 1998 during the development of the Consistency

Amendment, and again in 2003, but took no formal action at either time. This approach would remove the burden on the smallest vessels as long as they stay under 30 ft (9.1 m), but would establish upgrade provisions that are not uniform for all vessels, which might be confusing or seen as unfair.

5. *Complete removal of upgrade restrictions.* This would allow any vessel owner to move his/her permit to any other vessel. It would provide maximum flexibility to the industry, but would remove the baseline system’s restrictions on fleet structure and would likely have the largest impacts on the fishery and the environment.

The long comment period for this ANPR is intended to overlap with meetings of both Councils. While this topic may be discussed at the Council meetings, please submit written comments on the burden of the current vessel baseline system, the potential changes outlined here, or any suggestions for other changes that might be appropriate through one of the methods identified in the ADDRESSES section of this ANPR, to ensure that they are fully considered.

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

Dated: September 30, 2011.

Samuel D. Rauch III,
 Deputy Assistant Administrator for
 Regulatory Programs, National Marine
 Fisheries Service.

[FR Doc. 2011-25746 Filed 10-4-11; 8:45 am]

BILLING CODE 3510-22-P

Potential Changes to Vessel Baseline Upgrade Regulations
Summary of Public Comments on Advanced Notice of Proposed Rulemaking (ANPR)
May 2012 NRCC Meeting

Last October, the baseline workgroup published an ANPR to solicit public comment on potential changes to vessel baseline upgrade provisions and on the burden of the current regulations. The comment period ended on December 5, 2011, and 35 comments were received. Most comments were submitted by owners of commercial fishing vessels, with some additional comments from industry representatives, and a few comments by members of the public not associated with the fishing industry.

Workgroup Suggestions

The ANPR included 5 potential scenarios to spark discussion:

1. Eliminate tonnages.
2. Eliminate the one-time upgrade provision.
3. Change from a system of fixed upgrades to a system of size classes.
4. Remove baseline upgrade restrictions for vessels under 30 ft.
5. Complete removal of upgrade restrictions.

Seven commenters opposed all of the proposed changes and expressed concerns that any relaxing of baseline upgrade restrictions would lead to increased capacity, increased fishing mortality, additional fleet consolidation, and adversely change the character of the fleet. One commenter had supported changing baseline regulations in the past, but does not support changing them now as it might further aid vessels that have benefited from the Northeast multispecies change to sector management. One commenter was opposed to all commercial fishing and thought that no upgrades or replacements should be allowed.

Twelve commenters supported removal of all baseline upgrade restrictions. One of those individuals thought a maximum length should be adopted as a backstop, and recommended 165 ft.

Ten commenters supported removal of the tonnage specification, although one of those commenters wanted to eliminate only the net tonnage. One individual who supported this option suggested that high-volume fisheries could retain upgrade limits on hold capacity, such as has been adopted in mackerel. If we assume that all of the commenters who supported complete removal of baseline regulations would also support eliminating tonnage, support for this option rises to 19 of the 35 comments submitted.

Five commenters expressed support for removing the one-time limit on upgrading a vessel specification. However, other comments suggest that there may have been some confusion about what was intended by this option.

Seven commenters supported exempting vessels under 30 ft from the upgrade restrictions. One of those commenters suggested the exemption should cover boats up to 36 ft.

One commenter specifically opposed this alternative out of concern that a significant amount of effort would shift to high-tonnage high-horsepower vessels in this category.

Only one commenter supported the idea of switching to a series of size classes; while another commenter specifically opposed this option.

Two commenters did not specifically reference any of the scenarios, but did support increased flexibility for the industry.

Public Suggestions

Some commenters responded to our call for additional suggestions with their own ideas for how to improve the current system. Two people suggested the creation of a rod and reel permit category that would be exempt from baselines if the vessel owner was willing to permanently relinquish the ability to use any other gear type. Another individual suggested such an exemption apply to any vessel that committed to using hook-only gear. A few commenters suggested that the 10/10/20 percentage values might be adjusted to provide additional flexibility.

One person proposed a new upgrade system using a formula to convert a vessel's length, tonnage, and horsepower to a single value. The percentage upgrade would then apply to that single value, allowing a vessel owner more flexibility in replacement vessel specifications so long as the total value was within the upgrade allowed. This type of formula would allow an owner to increase one specification more by offsetting the increase with reductions to one or more of the others.

The ANPR also requested comment on the administrative and financial burden of the current regulations. Some commenters mentioned that the current system is a burden on vessel owners, however none of the comments received specifically addressed the time or cost required to document a vessel's specifications.

considered because those vessels do not receive IFQ. Additionally, the only vessels that can participate are those that already qualify for an LAGC IFQ permit.

3.4.2.4.1 Allow LAGC IFQ permit owners to permanently transfer some or all quota allocation to another IFQ permit holder (PROPOSED ACTION)

The intent of this alternative is to allow LAGC IFQ permit owners to permanently transfer some or all of their quota allocation independent of their IFQ permit to another LAGC IFQ permit holder while retaining the permit itself.

In regards to the mixing of IFQ pools that could happen under this alternative, if an LA/IFQ vessel leases in or out, the LA and LAGC pools would get mixed, but it would not impact IFQ percent shares. This would work for leases, but not transfers. For transfers, IFQs or shares would not be impacted until the following year when the total contribution factors on both sides would have to be adjusted, which would impact IFQ allocations for the next year. In general, if “mixing” is permitted by this action (Option A), additional restrictions and measures may want to be included to ensure that ownership caps and other measures put in place by Amendment 11 are maintained.

If an LA/IFQ vessel permanently transfers IFQ in or out, this may change the overall 5% and 0.5% allocations. For example, the 5% allocation would be expected to increase if an LA/IFQ vessel permanently transferred IFQ to an IFQ-only vessel. The increase in the 5% allocation could be equal to the amount transferred out (it would have to be converted somehow to IFQ-only contribution percent since the denominators are different). This has implications on the 5% ownership cap and current 2% IFQ limit per vessel platform. LA/IFQ vessels are not currently subject to those restrictions, so restrictions would need to be added to ensure that an LA/IFQ vessel could not accumulate more than the allowed IFQ. Monitoring of transferred IFQ would be adjusted within the system for IFQs and contribution factors.

Option A – This allowance would apply to all LACG IFQ permit holders (including LA vessels that also have a LAGC IFQ permit).

Option B – This allowance would only apply to LAGC IFQ permit holders that do not also have a LA permit. This option was included to prevent crossover of LACG allocation between the two LAGC permit types, 5% and 0.5% of total ACL.
(PROPOSED ACTION)

3.4.2.4.2 Allow LAGC IFQ permits owners to permanently transfer some or all allocation to a community-based trust or permit bank

This alternative would allow LAGC IFQ permit owners to permanently transfer some or all of their quota allocation independent of their IFQ permit to a community-based trust or permit bank while retaining the permit itself. Conversely, it would allow a permit bank to lease/transfer the IFQ to any LAGC IFQ permit holder.

3.4.2.5 Implementation of Community Fishing Associations (CFAs)

At the April NEFMC Council meeting, the NEFMC passed a motion to have the scallop PDT “[r]esearch and discuss the potential use of “regional fishery associations” or something like

them (permit bank) in terms of an entity being permitted to purchase IFQ with or without having to own a LAGC IFQ permit.”

The PDT discussed this issue at the May 2009 PDT meeting and ultimately developed two options for the Committee to consider: 1) consider adjustments to the current sector provisions to make them more place-based and allow other entities to control quota, and 2) develop a separate RFA or CFA program with details of provisions that would be considered. The Committee only adapted 2), and requested that Staff continue to identify issues that need to be resolved and requested that the advisory panel review the details and provide input on this alternative.

Community Fishing Associations and similar entities are being developed throughout the United States, particularly on the west coast, to deal with the rationalization of various fisheries, which can negatively affect the sustainability of fishing communities. For example, with the sablefish and halibut rationalization programs in Alaska, various larger entities purchased or were initially allocated large enough quotas that it effectively hurt the sustainability of fishing communities and villages along the Gulf of Alaska coastline. To help mitigate this problem, the North Pacific Fishery Management Council, in conjunction with the State of Alaska, created Community Quota Entities, which are non-profit organizations that can hold quota on behalf of the represented community/communities and allow various fishermen to lease and fish the quota. Further, the Pacific Fishery Management Council (PFMC) is developing Community Fishing Associations to address the consolidation concerns caused by the groundfish trawl rationalization program. The PFMC is currently in development of these CFAs, but their issues are more similar to those that have been raised in New England.

Concern has been raised at recent New England Fishery Management Council meetings about consolidation of the IFQ among LAGC participants. There is concern that larger entities will buy out smaller boat permits, stack IFQ, and effectively reduce the number of vessels in ports and number of players in the general category fishery. This will more than likely have negative consequences on the fishing communities throughout New England. The Scallop PDT, now, has been tasked with developing alternatives for creating Community Fishing Organizations, which would be permitted to acquire quota for distribution throughout the geographic community it represents.

The primary concerns described at meetings are that small, independent fishermen are at risk because of escalating prices for permits and LAGC IFQ, which are preventing new local entrants into the fishery. There is concern that permits are going to leave smaller fishing communities and lead to corporate consolidation impacting historical fishing communities. One specific goal identified is to enable an entity to hold quota and lease it to qualified fishermen in their defined community. The entity would not need to own a vessel and would not have to be engaged in harvesting. Some have voiced that the organizations should be place-based, or focused on a particular community. This alternative would consider explicit regulatory language to recognize and support *non-profit* entities that could purchase and hold permits and/or quota to be leased to qualified local fishermen at affordable rates.

3.4.2.5.1 No Action (PROPOSED ACTION)

A process for future community fishing associations or CFAs would not be established in Amendment 15.

3.4.2.5.2 Establish a process for Community Fishery Associations

This alternative would establish a process for the creation of Community Fishery Associations (CFAs), non-profit organizations that are allowed to hold quota (and permits if approved) on behalf of a defined community. These groups may be formed around common homeport(s) and/or landing port(s), and are designed to support local commercial fishermen. The following text provides an outline for the various required components of such an entity, including: required definitions, qualification/application, geographic designation/community affiliation, participation requirements and restrictions, Community Sustainability Plan (as outlined in Magnuson-Stevens Reauthorization Act), and other considerations for these entities.

Recently, the Pacific Fishery Management Council (PFMC) has also taken steps to address similar problems facing traditional fishing communities on the West Coast as a result of the trawl rationalization process. The PFMC is currently developing regulatory support for CFAs using language of the Magnuson-Stevens Act. This proposal draws extensively on these PFMC efforts.

Rationale: The purpose of establishing this process is to allow greater opportunities for fishery participants to proactively engage in resource governance, provide greater flexibility for fishermen, enable communities to thrive by establishing a community-driven plan, and create outcomes that are more socially and economically beneficial for communities within the biological limitations of the fishery. These entities would also support qualified new entrants to the fishery by allocating some portion of the holdings to be leased to individuals who have harvesting experience in the local fishery and who are working to start an independent fishing operation in that community.

- **Definition of a CFA**

A Community Fishing Association may be a partnership, voluntary association or other non-profit entity established under the laws of the U.S. that is eligible to hold quota (and possibly permits) and distribute said quota/permits to permitted fishermen within the geographic community that the CFA represents. These entities will be beholden to the eligibility requirements and participation criteria governing Regional Fishery Associations as outlined in the Magnuson-Stevens Act.

The goals of establishing Community Fishing Associations are to:

1. Mitigate the potentially negative economic and social impacts of current transitions to quota management in the LAGC fishery.
2. Provide affordable local industry access to fisheries resources.
3. Provide opportunities for qualified new entrants to the fishery.
4. Preserve traditional fishing communities and necessary onshore infrastructure.

- **Qualification as a CFA**

To be recognized as a CFA, an entity must:

1. Meet the geographic designation and membership requirements (below).
2. Have the expressed support of local governing entities (county, city or port district).
3. Meet the organizational standards (below).
4. Develop an adequate community sustainability plan (MSA 303A(c)(3)(i)(IV)).
5. Be organized and maintained as a non-profit corporation under U.S. law.

- **What CFAs Can Own and Lease Out**

Option A, Quota Only. Under this option CFAs would be able to purchase IFQ which can be leased to qualifying fishermen already possessing a LAGC permit.

Option B, Quota and Permits. This option would allow CFAs to purchase IFQ and permits which can then be leased to qualifying fishermen within the community.

- **Geographic Designations and Community Affiliations**

CFAs must be located within the management area of the Council (Based on MSA 303A(c)(3)). The geographic areas served by a CFA may overlap with the area served by another. However, a CFA may only represent one ‘community’ (i.e., a single management company *may not* administer multiple CFAs).

For the purposes of this program, a ‘community’ is defined here as either a single coastal town or small number of coastal towns that are geographically and economically interconnected. A ‘small number’ is intended to be near or under ten, and county boundaries may provide an appropriate guideline for delineation. For example, the ports of New Hampshire (Portsmouth, Rye, Hampton, Hampton Bays and Seabrook) all occupy one county (Rockingham), are in reasonable proximity to each other and conceivably rely on the same onshore infrastructure. They number less than ten, and therefore could be defined as a ‘community’ in terms of CFAs. A second example would be the ports of Plymouth County in Massachusetts (Green Harbor, Hull, Marion, Marshfield, Ocean Bluff, Plymouth, and Scituate). CFAs need not include all ports within one county, and as mentioned earlier, geographic areas served by a CFA may overlap.

Prior to approval, a CFA must demonstrate substantial support of community members and governing jurisdictions in the area it seeks to represent. Examples of such support include community petitions, and written endorsement from community leaders (mayor, etc.) or councils.

- **Participation Requirements**

The program developed by this FMP is limited to the LAGC scallop portion of the fishery, and harvest of the IFQ is restricted to LAGC permit holders only. These fishermen may lease CFA-held permits/quota to be harvested in compliance with all existing and relevant state, federal and international commercial fishing regulations. Harvest of LAGC IFQ under a CFA is restricted to individuals that qualified for a LAGC permit under Amendment 11, unless the option to allow for new entrants is included and approved in a future CFA application.

- **Organization and Operational Standards**

CFAs will establish open and transparent application and qualification criteria for the distribution of permits/quota to community fishermen. These entities will comply with existing and relevant leasing and transfer regulations that currently apply to individual permit-holders including lease reporting protocols, size-class or baseline restrictions, etc.

- **Community Sustainability Plan**

The CFA shall develop a community sustainability plan consistent with required sections of MSRA (MSA 303A(c)(3)(i)(IV)) that includes the following:

1. Specification of the organization's goals and objectives and the means by which it intends to meet those goals and objectives.

2. Description of how the CFA will contribute to the social development, economic development, and conservation needs of the fishery locally, including the needs of entry-level and small vessel owner-operators, captains, and crew. The description shall include anticipated efforts to address the following as necessary to maintain the characteristic of the community or support its economic development:

- a. sustaining effort by groundfish fisheries;
- b. maintaining crew, processing and seasonal employment opportunities;
- c. maintaining local processing activity;
- d. meeting local community and municipality needs; and
- e. investing in local infrastructure.

- **Restrictions on Holding Quota**

Much concern in the early stages of CFA research has been that quota will be improperly obtained or used in ways that are a detriment to the LAGC fishery and/or the same community it is designed to help, i.e. obtaining IFQ with the intent that it not be harvested. For this reason a stringent application process and monitoring plan must be implemented to be sure the CFA benefits the community as intended and overall scallop plan in terms of optimizing yield.

- **Application for Status as a CFA**

CFA applications will include:

1. Articles of incorporation and bylaws.
2. Organization chart and explanation of management structure.
3. A community sustainability plan (see above; MSA 303A(c)(3)(i)(IV)).
4. All information needed for NMFS to assess compliance with control limits.
5. Operating procedures including description of a. roles and responsibilities of the association, board members, staff, and contractors, the process and criteria by which permits/quota will be distributed, and dispute resolution processes.
5. Documentation that shows compliance with all other CFA eligibility requirements.

These applications will not be in a specific action because CFAs are a leasing mechanism which will not affect the rest of the fishery in terms of allocations, etc. Much like general category sectors, CFAs will be required to submit all application materials eight months prior to the start of the fishing year, or July 1.

- **Criteria for Evaluating Applications and Approval Process**

CFAs will be approved provided a complete application has been provided to the New England Fishery Management Council and the National Marine Fisheries Service by agreed upon deadlines. The Council will ensure that all requirements listed above are fully and satisfactorily met prior to approval, including those pertaining to geographic representation and community support. Approval will include specification of special responsibilities and considerations being afforded the CFA (e.g. the level of quota shares control that will be afforded the CFA).

- **General Participation and Special Considerations**

CFAs will participate in common with all other participants in the IFQ program and have the same rights and responsibilities, except with respect to special responsibilities and considerations

provided for by the Council and through NMFS regulations. General participation includes leasing quota under provisions identical to those which apply to all other participants in the LAGC fishery.

Special Consideration – Accumulation Limits

CFAs would be obligated to remain within existing and relevant accumulation limits unless the New England Fishery Management Council decided to explicitly amend such limits in a future action. Currently, an individual permit holder can own up to 5% of the total LAGC IFQ allocation, and a sector can hold up to 20%. The ownership limit under consideration by the PFMC for a CFA is 10%. This accumulation limit recognizes that to be effective, a CFA must be able to accumulate sufficient fisheries access to support more than a single fishing operation within the community, while maintaining a relatively low cap. This action is considering a limit of 5% of LAGC IFQ for any CFA.

Special Responsibility – Reporting Requirements

CFAs would be required to report annually on specific aspects of their operations, CFA performance measures, etc. Specifically, each entity will be required to report the number of lease applications received for their permits/quota; the number, names, and characteristics of the financially independent fishing operations that leased the CFAs permits/quota; the proportion of permits/quota leased in a given year relative to the entity's total holdings; and a summary of how holdings were distributed among applicants. This will help to confirm that the quota is remaining within the community as intended.

- **Monitoring of CFAs**

The Council noted that current monitoring provisions may not encompass what is needed to track use of CFA IFQ. There will likely be need for addition of a new (VMS) code by NMFS so that individual trips can be monitored as to whether they are fishing under CFA IFQ or their own. Alternatively, the Council could decide to have the CFA be responsible for tracking its own use of IFQ, and NMFS would simply continue to track the vessel's overall landings. It also needs to be determined whether the vessel landing the scallops would still be responsible for the cost recovery payment, or if that would be the CFA's responsibility. This should be something that the CFA addresses in its "community sustainability plan."

- **Movement between CFAs**

As multiple CFAs may simultaneously support a given community, a fisherman may lease quota from more than one CFA during a given fishing year. Each permit-holder will remain bound by the existing individual harvesting and ownership caps. The relationship between a CFA and a participating fisherman who leases a permit and/or quota is terminated with the harvest of the leased pounds; from the perspective of the Council and NMFS, there is no membership or expectation of continuing connection between these two independent entities (CFA and the individual).

- **Program Evaluation**

The Community Fishing Association (CFA) program developed by the NEFMC would be reviewed approximately every three years (or when Council priorities permit) after implementation to ensure progress in achieving the stated programmatic objectives and to make any small revisions required. Individual CFAs will need to report to the Council annually with

the number of participants leasing quota, the amount of quota leased/controlled, and the amount of quota harvested and the rest of the required information, as discussed above.

- **Organizational Evaluation**

Performance of individual Community Fishing Associations (CFAs) would be fully reviewed after three years of operation. Performance will be measured based on the ability of the CFA to support the objectives of the program and to help meet the needs of the fishing community. This review will result in the continued approval, conditional approval (with specific operational changes to be made), or the disapproval of the CFA by the Council and/or NMFS.

After this initial review, each program will undergo a full review every five years or more frequently if deemed necessary by the Council and/or NMFS.

3.4.3 Measures to address EFH closed areas if EFH Omnibus Amendment 2 is delayed

One component of the EFH Omnibus Amendment 2 is the development of alternatives for minimizing adverse impacts of fishing on EFH to the extent practicable. This includes a review and possible modification of existing EFH closed areas, as well as other measures that are in place to minimize impacts of fishing on EFH. The Council is expected to approve a final range of alternatives in November 2010. However, this timeline is not adequate enough to allow the Scallop Committee and Council to know what areas will most likely be available as potential scallop rotational areas for FY2011 and FY2012 (Framework 22). With this delay of the EFH amendment, access into Georges Bank closed areas is still limited to areas not closed to the scallop fishery for EFH under both the Scallop FMP and the Groundfish FMP.

Framework 16/39 (2004) proposed to make the two plans consistent in terms of closed areas to minimize adverse impacts on EFH, but that action was challenged because it was not done in an amendment (just a framework) and, as a result, areas closed for EFH under both Amendment 10 and Amendment 13 still apply to the scallop fishery. In most cases the two plans are consistent, with two important differences in terms of areas with relatively high scallop abundance: the northern part of Closed Area II north of the cod HAPC, and the central portion of Closed Area I south of the original scallop access area (See Figure 14). This action is considering alternatives to address the inconsistent EFH areas currently closed to the scallop fishery under both the Scallop and Groundfish FMPs.

3.4.3.1 No Action

This alternative would maintain the measures in place to minimize impacts on EFH. Specifically, areas closed in Amendment 10 and Amendment 13 to minimize impacts on EFH would apply to the scallop fishery unless modified under Phase II of the EFH Omnibus Amendment (Amendment 14 to the Scallop FMP).

3.4.3.2 Modify the existing EFH closed areas to be consistent with EFH areas closed under Multispecies Amendment 13 (PROPOSED ACTION)

This alternative would modify the EFH closed areas in the Scallop FMP by removing the four scallop-fishery-specific EFH closed areas that were implemented in Amendment 10 to the Scallop FMP (Figure 5 - shaded areas), and it would replace them with EFH closed areas that are identical to the EFH closed areas that were implemented in Amendment 13 to the Multispecies

New England Fishery Management Council

Contracted project: To Provide Recommendations for Defining Excessive Shares in the Northeast Multispecies Fishery

Scope of Work: The purpose of the contracted work is to give independent advice to the NEFMC to help it determine an appropriate excessive shares limit in the Northeast Multispecies fishery, focusing on approaches that may achieve Goal #4 of Amendment 18.

Terms of Reference:

1. Describe a theoretically sound method to specify the maximum possible allowable percentage share of the market for the fishery access privileges (permits, PSC) and/or the quota leasing (ACE trading) that would prevent an entity from obtaining an excessive share of the access privileges allocated under the Northeast Multispecies Fishery. Use the Herfindahl-Hirschman Index prescribed within the “US Department of Justice Horizontal Merger Guidelines” or other accepted rule as appropriate.
2. Apply the process or rule developed under Number 1 to determine if excessive shares already exist in this fishery. If excessive shares do not exist today, describe potential constraints that could prevent excessive shares from existing in the future. Alternatively, if excessive shares do exist, describe a process or rule that will allow for a theoretically sound procedure to prevent future increase.
3. If the rule cannot be applied because of incomplete data, provide suggestions of how to apply the rule in the best way possible that is consistent with the theoretical underpinnings of the rule. Also, identify data that would be necessary to apply the rule.
4. Identify conditions where entities, could exert “inordinate control” of quota as outlined in the National Standard 4 Guidelines. Such entities could include business entities holding permits, sectors, or organizations of sectors.
5. Alternate approaches to achieving the Amendment 18 goals (other than accumulation caps) may be proposed.

Project Phases:

Phase I: Initial consultation and quantitative data gathering (August-September 2013)

The contractor shall secure appropriate NMFS economic and fishery data and pertinent background reports that would help meet the Terms of Reference.

Phase II: Initial public input (September-October 2013)

The contractor shall seek input from stakeholder informants via individual or small-group interviews. There will be one public webinar, facilitated by NEFMC staff, to receive additional input and preliminary feedback from the public.

Phase III: Draft report preparation and presentation (October-November 2013)

The contractor shall prepare a draft report for the NEFMC that addresses the Terms of Reference. There will be a public meeting held by the NEFMC to present the draft report and solicit feedback.

Phase IV: Final report preparation (November-December 2013)

The contractor shall prepare a final report for the NEFMC.

NEFMC Point of Contact: Rachel Feeney, 978-465-0492x110, rfeeney@nefmc.org

Amendment 18 Goals:¹

1. Promote a diverse groundfish fishery, including different gear types, vessel sizes, ownership patterns, geographic locations, and levels of participation through sectors and permit banks;
2. Enhance sector management to effectively engage industry to achieve management goals and improve data quality;
3. Promote resilience and stability of fishing businesses by encouraging diversification, quota utilization and capital investment; and
4. To prevent any individual(s), corporation(s), or other entity(ies) from acquiring or controlling excessive shares of the fishery access privileges.

¹ As approved by the NEFMC in June 2013.