



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
GREATER ATLANTIC REGIONAL FISHERIES OFFICE  
55 Great Republic Drive  
Gloucester, MA 01930-2276

**APR 15 2019**

Thomas A. Nies  
Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

Dear Tom:

In recent years we have received several permit applications to replace a limited access scallop vessel with another limited access scallop vessel after at least one of the vessels has already fished some or all of its scallop fishery allocation for that year. This has required us to take a hard look at our vessel replacement policy in light of the Atlantic Sea Scallop Fishery Management Plan's (FMP) prohibition on combining or consolidating permits, days-at-sea (DAS), and trip allocations. This is something we are seeing mostly with scallop permits, but it can also be an issue for Northeast multispecies and monkfish permits because those fishery management plans have the same prohibition. I would like the Council to be aware of this activity and how we are handling it.

The prohibitions on consolidating or combining limited access permits and DAS allocations on a single vessel were part of the implementing regulations for Amendment 4 to the Atlantic Sea Scallop FMP and Amendment 5 to the Northeast Multispecies FMP. See 50 CFR 648.4(a)(2)(i)(G), and cross-references to the Northeast multispecies regulations at § 648.4(a)(1)(i)(G). The same prohibition exists for monkfish permits at § 648.4(a)(9)(i)(G) with the same cross-reference to the Northeast multispecies regulations. These prohibitions arose out of our attempt to uphold the Council's intent in these amendments to prevent vessels from circumventing effort limitations that were designed to maintain the level of effective fishing power of vessels that existed prior to the amendments. For example, to allow fishing activities that were historically done by two vessels to now be done by one vessel would undermine this intent by increasing the effective fishing power of the remaining fishing vessels.

Upon implementation of the limited access programs for the Atlantic sea scallop and Northeast multispecies fisheries, several vessel owners asked whether a limited access vessel that has used some or all of its DAS in a given fishing year could replace another limited access vessel that has not used all of its DAS. They asked whether the replacement vessel may then fish additional DAS based on the allocation of DAS to which the vessel being replaced was entitled, all in the same fishing year. In other words, owners were asking if there was any way, under the current regulations, for one vessel to fish two allocations of DAS in one fishing year.

To address this question, in 1994 we developed, in consultation with the NOAA Office of General Counsel, an application processing policy for this issue to prevent combining or



consolidating effort allocations that would be inconsistent with the scallop and multispecies amendments. In developing this policy, it was understood that the prohibitions on combining or consolidating these effort allocations were not intended to, and did not, prevent one-time vessel replacements that were allowed by the fishery to address legitimate needs to replace inoperable or unseaworthy vessels arising in the normal course of fishing during a fishing year. Thus, the policy recognized that an owner with a legitimate need may replace an inoperable vessel with another vessel that had fished for scallops or groundfish earlier in the same year because the replacement would not undermine the intent of the FMPs to maintain historic levels of fishing effort. The policy extends to monkfish limited access permits which were implemented after the policy was completed. My staff have strived to adhere to this policy since its development in 1994.

In these fisheries, the policy recommends disapproving the replacement of a vessel that has not fished all of its allocation during a fishing year by another vessel that has fished in the same fishing year, if the same owner owns both vessels; or the vessel owner entities have common ownership or a common interest in the vessels involved. To disapprove these types of replacements involving overlapping ownership interests helps assure that vessel owners do not consolidate fishing activities that were previously conducted on multiple vessels onto one vessel; thereby undermining the purpose of the prohibitions on consolidating or combining fishing allocations. Determining which applications involve these types of vessel replacements, however, is challenging and often involves complicated situations with multiple vessels and owners. Our decision to deny or discourage these types of applications can be confusing to, and very contentious with, the owners involved.<sup>1</sup> For this reason, we have decided to clarify our policy so that we can help ensure that our decisions are consistent and understandable. To that end, we will allow vessel replacements of scallop, multispecies, and monkfish vessels, resulting in the combining or consolidating of fishing allocations of two or more vessels onto one vessel in a fishing year, if we can make the following findings:

- 1) That the vessel being replaced is not operable due to unforeseen circumstances at the time of the replacement request and cannot be fished the remainder of the current fishing year. This includes vessels whose allocations have been put into Confirmation of Permit History due to documented inoperability for the rest of the fishing year;
- 2) That the purchase and sale of the vessel to be used as a replacement (new vessel) is an arm's length transaction at fair market value; and
- 3) That the two business entities involved in the purchase and sale have no common owners or directors and have no mutually beneficial financial interests arising out of the transfer of fishing allocations to the replacement vessel.

In addition, any time we allow a vessel replacement based on these findings, we will send a letter with the issued permit stating that the permit transfer is null and void if the seller or buyer disagree with our findings or they conclude that our findings are not true and correct. We will also inform the vessel owner that if the ownership of the replacement vessel reverts to its original owner, we may not issue a scallop permit to such vessel in the fishing year after the replacement

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<sup>1</sup> Indeed, a lawsuit against NMFS was recently filed challenging our denial of a scallop vessel replacement based on this policy.

if such vessel has already fished in such year (other than carryover allocations from the previous fishing year) under a different scallop permit.

These clarifications help preserve the intent of the permit consolidation prohibition and provide more objective guidance to vessel owners who, due to unforeseen operational circumstances of their vessel, may have to replace that vessel with a vessel that has already fished a limited access scallop, multispecies or monkfish permit within the same fishing year.

My staff is available should follow-up information be requested by you or your staff. If you have any questions, please contact me or David Gouveia at (978) 281-9280 or [David.Gouveia@noaa.gov](mailto:David.Gouveia@noaa.gov).

Sincerely,



Michael Pentony  
Regional Administrator

cc: Christopher Moore, PhD