

**Amendment 11 to the Summer Flounder, Scup & Black Sea Bass Fishery Management Plan**

**Amendment 7 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan**

**Amendment 11 to the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan**

**Amendment 8 to the Atlantic Sea Scallop Fishery Management Plan**

**Amendment 10 to the Northeast Multispecies Fishery Management Plan**

**Amendment 7 to the American Lobster Fishery Management Plan**

**Environmental Assessment**

**Regulatory Impact Review**

**to**

**Achieve Consistency Among Mid-Atlantic and New England Fishery Management Plans on Vessel Replacement and Upgrade Provisions, and Permit History Transfer, Splitting and Renewal Regulations for Fishing Vessels Issued Northeast Limited Access Federal Fishery Permits**

Prepared by the

National Marine Fisheries Service  
One Blackburn Drive  
Gloucester, MA 01930-2298

in consultation with

Mid-Atlantic Fishery Management Council  
Federal Building, Suite 2115  
300 South New Street  
Dover, Delaware 19904-6790  
Tel (302) 674-2331

and the

New England Fishery Management Council  
5 Broadway (Route 1)  
Saugus, MA 01906-1036  
Tel (781) 231-0422

Draft adopted by MAFMC - 3 June 1998  
Draft adopted by NEFMC - 24 June 1998  
Final adopted by MAFMC - 20 August 1998  
Final adopted by NEFMC - 24 September 1998



## Table of Contents

1.0	Introduction.....	Page 1
2.0	Purpose and Need for Action.....	Page 1
2.1	History.....	Page 1
2.2	Current Mid-Atlantic and New England FMP Regulations on Permit Transfers, Vessel Upgrades, Replacement Vessels, and Other Relevant Provisions and Proposed Regulations.....	Page 4
2.2.1	Vessel Upgrades and Replacements.....	Page 4
2.2.2	Fishing History and Permit Transfer.....	Page 5
2.2.3	Establishment of Vessel Baselines.....	Page 5
2.2.4	Voluntary Relinquishment of Permit Eligibility.....	Page 6
2.2.5	Permit Splitting.....	Page 6
2.2.6	Permit Renewal.....	Page 6
2.3	Problems with the Current Regulatory Situation.....	Page 7
2.3.1	Problems for Vessels With Multiple Permits.....	Page 7
2.3.2	Problems With Differences in Permit History Transfers & Splitting.....	Page 8
2.3.3	Problems With Vessel Ownership Restrictions.....	Page 9
2.3.4	Problems With Upgrading Existing Permitted Vessels....	Page 9
2.3.5	Problems With Replacement Restrictions Based on Vessel Condition.....	Page 9
2.3.6	Other Problems.....	Page 9
2.4	Management Objectives.....	Page 10
3.0	Alternatives Including the Preferred Action.....	Page 10
3.1	Alternative 1 - No Action.....	Page 10
3.2	Alternative 2 (Preferred) - Standardize Vessel Replacement, Vessel Upgrade, History Transfer, Permit Splitting, and Permit Relinquishment Regulations Across All Northeast Region Fishery Management Plans with such Provisions; Establish Baseline Dates For Limited Access Vessels Without Them; Revise the Summer Flounder Baseline Date to be Consistent with Black Sea Bass and Scup, and Summer Flounder Upgrade Baseline Date; and Standardize Permit Renewal and Confirmation of Permit History Requirements for all Northeast Fisheries.....	Page 11
4.0	Environmental Assessment.....	Page 12
4.1	Description of Affected Fisheries.....	Page 12
4.1.1	Summer Flounder Commercial Fishery.....	Page 12
4.1.2	Scup Commercial Fishery.....	Page 13
4.1.3	Black Sea Bass Commercial Fishery.....	Page 13
4.1.4	Loligo/Butterfish & Illex Squid Commercial Fishery...	Page 14
4.1.5	Mahogany Quahog Commercial Fishery.....	Page 14
4.1.6	N.E. Multispecies Commercial Fishery.....	Page 15
4.1.7	Atlantic Sea Scallop Commercial Fishery.....	Page 15
4.1.8	American Lobster Commercial Fishery.....	Page 16
4.2	Environmental Impacts.....	Page 16
4.2.1	Environmental Impacts of No-Action Alternative.....	Page 16
4.2.1.1	Effects on Affected Species.....	Page 16

4.2.1.2	Effects on the Environment.....	Page 16
4.2.1.3	Effects on Flood Plains.....	Page 16
4.2.1.4	Effects on Marine Mammals and Sea Turtles....	Page 17
4.2.1.5	Social/Cultural Impacts.....	Page 17
4.2.2	Environmental Impacts of Preferred Alternative.....	Page 17
4.2.2.1	Effects on Affected Species.....	Page 17
4.2.2.2	Effects on the Environment.....	Page 19
4.2.2.3	Effects on Flood Plains.....	Page 19
4.2.2.4	Coastal Zone Management Act.....	Page 19
4.2.2.5	Effects on Marine Mammals and Sea Turtles....	Page 19
4.2.2.6	Social/Cultural Impacts.....	Page 20
4.3	Rationale for Adoption of the Preferred Alternative.....	Page 20
4.4	Finding of No Significant Impact (FONSI).....	Page 21
4.5	Agencies Consulted in Formulating the Action.....	Page 22
4.6	Preparers of Environmental Assessment.....	Page 22
5.0	Regulatory Impact Review: Economic Impacts.....	Page 22
5.0.1	Problem Statement.....	Page 22
5.0.2	Objectives.....	Page 22
5.1	Management Alternatives.....	Page 22
5.1.1	Beneficial Impacts of Preferred Alternative.....	Page 22
5.1.2	Potential Costs of Preferred Alternative.....	Page 25
5.2	Executive Order 12866.....	Page 25
5.3	Regulatory Flexibility Act Analysis.....	Page 27
6.0	Magnuson-Stevens Act Requirements.....	Page 27
7.0	Paperwork Reduction Act Requirements.....	Page 29
Table 1 - Current and Proposed Vessel Replacement & Transfer Provisions		
Table 2 - Limited Access Permits by Category, 1997-98		
Table 3 - Benefits and Costs of the Preferred Alternative		

#### APPENDICES

1. Addendum on Changing or Eliminating Vessel Replacement and Upgrade Restriction on Vessels Less Than 30 Feet
2. Summary of Public Hearings and Comments Received
3. NMFS Response to Comments

## 1.0 Introduction

The Fishery Management Plans (FMPs) for summer flounder, scup, black sea bass, Loligo squid/butterfish, Illex squid, mahogany quahogs, Atlantic sea scallops, multispecies, and American lobster all require that a fishing vessel shall be issued a Federal fishing permit (hereinafter referred to as a permit) that authorizes the harvest of the relevant regulated species. Different categories of permits authorize varying levels of participation in these fisheries. As a result, the issuance of vessel permits has important implications for the fishing industry. Limited Access permits (also called moratorium permits in some FMPs) are issued only to vessels that meet eligibility criteria reflecting historic participation in the fishery. Open access permits are issued upon request to any vessel.

These FMP amendments are proposed to achieve regulatory consistency on important provisions regarding vessel replacement, permit transfers, vessel size and horsepower upgrades, permit splitting and permit renewal for fishing vessels which have been issued limited access Northeast Region Federal fishery permits. These terms will be more clearly defined in later sections of the document.

The current vessel permit regulations in the Northeast Region evolved over many years, resulting in a patchwork where the regulations differ across several FMPs. These differences have proven to be confusing and inefficient, especially in the case of vessels which are issued several limited access Federal fishery permits. Routine business transactions, such as the sale of a vessel, have become unnecessarily complicated because different restrictions exist regarding permit transfers, vessel replacement, vessel upgrades, permit splitting and permit renewal. The complexity of the regulations has hampered vessel owners from making changes to existing vessels or from purchasing new vessels. The complexity has also hampered the National Marine Fisheries Service (NMFS) in its review of permit history transfer requests. The amendments proposed in this document would implement a single set of regulations to govern these activities across all Northeast Region FMPs which have limited access permits. These amendments also standardize vessel permit renewal requirements and permit splitting restrictions.

## 2.0 Purpose and Need for Action

### 2.1 History

Overall fishing effort in the Northeastern U.S. increased dramatically during the 1970's and 1980's, due to both increasing numbers of vessels and increasing technological sophistication of individual vessels. As a result of this increased effort, fishing mortality on several important fish stocks reached

critical levels.

The Mid-Atlantic Fishery Management Council (MAFMC) recognized the need to address unrestricted growth in the number of commercial vessels fishing for summer flounder in Amendment 2 to the Summer Flounder FMP (effective November 30, 1992). Only vessels that met certain qualification criteria were found eligible for commercial permits. Fishing mortality reduction was to be accomplished under the FMP through the use of a state-by-state summer flounder quota in combination with the permit moratorium.

Soon thereafter, the New England Fishery Management Council (NEFMC) implemented Amendment 5 to the Northeast Multispecies FMP (effective March 1, 1994). Amendment 5 sought to achieve an average fishing mortality reduction target by reducing overall multispecies fishing effort. The FMP implemented reductions in the amount of time (days-at-sea) vessels would be allowed to fish for multispecies. As a part of the overall effort reduction program, a moratorium was imposed on the issuance of additional multispecies vessel permits, while allowing certain open access exceptions for vessels which did not traditionally harvest large amounts of multispecies.

Simultaneously, Amendment 4 to the Atlantic Sea Scallop FMP (effective March 1, 1994) implemented a moratorium on the issuance of additional sea scallop vessel permits, with certain open access exceptions for vessels which did not traditionally harvest large amounts of sea scallops.

In the next few years, limited access fishery permits were implemented for American lobster (July 20, 1994), scup (September 23, 1996), black sea bass (December 16, 1996), Loligo/butterfish (May 2, 1996), Illex (June 26, 1997), and mahogany quahogs (May 21, 1998).

These nine limited access programs were developed by the Northeast Region's two Fishery Management Councils over a period of several years. Therefore, a variety of approaches were chosen to address important activities such as vessel sales, limited access permit transfers, permit splitting, vessel size and horsepower upgrades, ownership restrictions and the establishment of vessel baseline specifications. The following section describes these provisions and a summary is presented in Table 1. For ease of reference, the proposed regulation is also included for each provision in both the text and the table.

The replacement/upgrade provisions in each fishery have developed differently both regionally and over time. The MAFMC adopted the first limited access permit in the surf clam and ocean quahog FMP in 1977 (this fishery became an ITQ fishery in September, 1990, thereby eliminating the limited access permits). The surf clam and ocean quahog FMP moratorium had very restrictive vessel replacement provisions, including a prohibition on any increase in the length of a vessel, a requirement that a vessel be unseaworthy before it could be replaced and a requirement that both the permitted and the

replacement vessels be owned by the same person. The purpose of these provisions was to prevent increases in vessel fishing power that would contravene controls on fishing effort.

When the summer flounder limited access moratorium permit was adopted by the MAFMC in 1991, these same provisions were included.

Soon after this, the NEFMC began the development of permit moratoria for the multispecies and scallop fisheries. It was during the development of these FMPs, and as a result of the experience of the two previous moratoria, that the fishing industry, engine and vessel manufacturers came forward to make recommendations to the NEFMC on vessel replacement provisions that did not compromise the goal of capping fishing power yet provided some flexibility to fishery participants. As a result, the provisions adopted for the Multispecies and Scallop FMPs differed from those in the Summer Flounder FMP.

This created a dilemma for the MAFMC during adoption of subsequent limited access moratoria. Although the MAFMC was aware of the background of the scallop and multispecies provisions, the new provisions were untested, were perceived to potentially allow increases in fishing power and were inconsistent with the summer flounder requirements. The summer flounder requirements were eventually adopted for scup, Loligo/butterfish, and Illex. However, as new moratoria were added the problem of differing replacement provisions became cumulatively larger. With adoption of the black sea bass limited access moratorium in 1996, the MAFMC, at the urging of industry, adopted some of the multispecies and scallop replacement/upgrade provisions. More recently, Amendment 10 to the Summer Flounder FMP also adopted some of these provisions.

The result is that there are currently four different sets of upgrade/replacement provisions in the various FMPs. This has been confusing to the industry, has created safety concerns and, in some cases, financial hardship, and has been difficult to administer.

Currently, the Northeast Region of the National Marine Fisheries Service processes approximately 200 vessel replacement and/or permit transfer requests annually. Table 2 indicates that 4430 vessels possessed limited access permits in 1997. Given the magnitude of these numbers, streamlining the process by making regulations consistent is important. Both the MAFMC and NEFMC and the NMFS are in strong agreement that to achieve fairness and equity in these requirements and to reduce the administrative burden the regulations must be made consistent across all Northeast fisheries.

The following section describes existing provisions in each of the FMPs and the proposed revision to that provision. The rationale for selection of the revision is provided later in the document.

## 2.2 Current Mid-Atlantic and New England FMP Regulations on Permit Transfers, Vessel Upgrades, Replacement Vessels and Other Relevant Provisions And Proposed Regulations

### 2.2.1 Vessel Upgrades and Replacements

A vessel upgrade occurs when the existing limited access vessel is increased in size, or its engine is increased in horsepower. Vessel replacement, in general, refers to replacing an existing limited access vessel with another vessel. The procedures and conditions associated with accomplishing these differ widely among the FMP's, but can be grouped into three general categories of restrictions on: a) increases in size, b) ownership, and c) condition of the vessel.

a) *Vessel Size*: The multispecies, sea scallop and summer flounder regulations provide for one allowable increase in vessel size [10% of length-over-all (LOA) and gross registered tonnage (GRT) and net tonnage (NT)] and 20% in horsepower so that vessels fishing under limited access programs cannot be infinitely enlarged and thereby negate the fishing mortality reduction benefits associated with effort reduction and quota programs. Multispecies and scallop vessels are restricted to one increase through either replacement or upgrade. Summer flounder vessels may only increase once through replacement, but may be infinitely increased through upgrade. The black sea bass, scup, mahogany quahog, Loligo/butterfish and Illex regulations do not place restrictions on upgrading vessels which currently possess a moratorium permit ("jumboizing"), but do prohibit any increase in the GRT or length of replacement vessels. The lobster regulations do not restrict increases in size or horsepower.

b) *Ownership*: In the Loligo/butterfish, Illex, scup, black sea bass, and mahogany quahog regulations, to be eligible for a moratorium permit, both the vessel being replaced and the vessel entering the fishery must be owned by the same person. In the multispecies, sea scallop, summer flounder and lobster regulations, the replacement vessel and vessel exiting the fishery do not have to both be owned by the same person. Only the fishing and permit history and the replacement vessel must to be owned by the same person.

c) *Vessel Condition*: In the Loligo/butterfish, Illex, scup, black sea bass, and mahogany quahog regulations, a vessel must be judged unseaworthy, for reason other than lack of maintenance, or must have left the fishery involuntarily (e.g., sunk) to be eligible for replacement. No restrictions on vessel condition exist in other FMPs.

PROPOSED: In all FMPs with moratorium permits, the following restrictions are proposed. The vessel size restriction would not be applicable for the lobster FMP. In that FMP, the Council chose to establish no size restrictions, and none are proposed here.

a) Vessel Size: A one-time upgrade/replacement allowance of 10% in size (GRT, NT, and LOA) and 20% in horsepower (HP), for all FMPs with existing replacement or upgrade restrictions.

b) Ownership: Both the vessel's fishing/permit history and the replacement vessel would have to be owned by the entity requesting the replacement.

c) Vessel Condition: No restriction on vessel condition.

### **2.2.2 Fishing History and Permit Transfer**

Because moratorium permits confer valuable harvesting rights to a limited number of vessels, procedures were established to allow ownership of fishing and permit histories to be specified when a vessel was sold. The regulations for multispecies, sea scallops, lobster and black sea bass indicate that the "fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement...verifying that the transferor/seller is retaining the vessels fishing and permit history for purposes of replacing the vessel." The summer flounder, scup, Loligo/butterfish, Illex and mahogany quahog regulations do not allow for the fishing and permit history to be retained by the seller. It transfers with the vessel.

PROPOSED: All fishing and permit histories could be retained. Fishing and permit history will be presumed to transfer with the vessel, unless it is retained through a written agreement signed by both parties in any vessel sale or transfer..

### **2.2.3 Establishment of Vessel Baselines**

A vessel's baseline refers to those specifications (LOA, GRT, NT and HP) from which any future vessel size change is measured. The multispecies and sea scallop FMPs currently include provisions for the establishment of baselines. As a result, all replacement/upgrades are judged against the vessel that originally obtained the limited access permit. The other FMPs with moratorium permits do not restrict alteration of a limited access vessel, so baselines are not required. (The exception is summer flounder, which has a baseline for the purpose of replacements, but not upgrades.) By adding vessel upgrade restrictions to black sea bass, scup, Loligo/butterfish, Illex, summer flounder and mahogany quahog permits, it then becomes necessary to establish a baseline date for vessels with these permits.

PROPOSED: Establish vessel baseline dates for all vessels issued limited access scup, Loligo/butterfish, Illex, black sea bass, or mahogany quahog permits. The baseline date would be the effective date the regulations implementing this FMP amendment. Revise the summer flounder baseline date to be consistent with

this date to minimize the number of different baseline dates and to achieve consistency within the FMPs for summer flounder, scup and black sea bass.

#### **2.2.4 Voluntary Relinquishment of Permit Eligibility**

This provision was implemented to provide a mechanism for a vessel owner to voluntarily exit a limited access fishery. It also allows vessel owners to choose between different permits with different restrictions without being bound by the more restrictive requirement (e.g., lobster permit holders may choose to relinquish their multispecies permits to avoid being subject to those reporting requirements, which some consider to be too difficult for the lobster fishery). Because there will be vessels with differing baselines for different permits, allowing vessel owners to voluntarily relinquish a limited access permit will allow them to choose among these baselines when upgrading or replacing their vessel.

PROPOSED: Authorize the permanent relinquishment of limited access permit eligibility by a vessel owner.

#### **2.2.5 Permit Splitting**

In the summer flounder, scup, Loligo/butterfish, Illex, and mahogany quahog FMPs, fishing and permit history always remains with the vessel. Therefore, these limited access permits effectively stay together as a "package" with the vessel. They may not be split apart and distributed among other vessels, thereby increasing overall fleet capacity. Similarly, by adopting the proposed provision allowing all limited access permits to be retained in writing when a vessel is sold, it is necessary to adopt a regulation requiring the permits to move as a "package" rather than allowing them to be split and distributed to several vessels.

PROPOSED: Implement a prohibition on limited access permit splitting in all FMPs.

#### **2.2.6 Permit Renewal**

The multispecies and sea scallop FMPs require vessel permit eligibility to be maintained annually. This is done through permit renewal or issuance of a Confirmation of Permit History (CPH). A CPH is issued to a person who does not currently own a fishing vessel, but who has legally retained the fishing and permit history of the vessel for the purpose of transferring it to a replacement vessel at a future date. The other FMPs neither require annual renewal nor offer the option of registering a fishing history through a CPH. Annual renewal is considered important in establishing participants who have a active interest

in maintaining their ability to participate in a limited access fishery, and conversely allowing permits to lapse and be cancelled for those that do not. The CPH is also important in this regard. It provides a benefit to a vessel owner by securing a vessel history through a registration system.

PROPOSED: For all FMPs with moratorium permits, require annual permit renewal and a onetime registration of CPH. The annual issuance of the CPH would be eliminated because it is unnecessary.

### **2.3 Problems with the Current Regulatory Situation**

Several problems occur because of the patchwork of regulations that exist in the different FMPs regarding vessel replacement, permit transfers, vessel upgrades, permit splitting and permit renewal. The single, biggest problem is that the regulations are confusing for the fishing industry to comply with, and are time consuming for NMFS to administer. Each vessel replacement, permit transfer, or upgrade differs according to the permits that a vessel possesses, and the actions that are being requested. Rarely are any two alike. Although the most restrictive regulations will apply, vessel owners must potentially be aware of several sets of regulations governing replacement vessels and permit transfers when buying or selling vessels to determine what is legally allowable, and appropriate for their circumstances. Similarly, the Federal government must painstakingly analyze each unique vessel replacement to determine its proper disposition. A "decision-tree" algorithm was recently developed to facilitate this process, and it involved over fifty discrete steps. The algorithm, and hence the time required for analysis, would be much shorter if a single set of regulations were adopted. The multitude of regulations is not efficient for the fishing industry or for the government. Moreover, the diversity of regulations serves no conservation benefit. The major problems are described in the following paragraphs.

#### **2.3.1 Problems for Vessels With Multiple Permits**

Most vessel replacement problems occur when vessels with multiple limited access permits are bought, sold or upgraded. As Table 1 shows, 2079 vessels, or 47% of vessels with any limited access permits, hold such permits for two or more fisheries. Under a worst case scenario, four different sets of guidelines would need to be interpreted if a vessel possessed limited access permits for multispecies, summer flounder, black sea bass, and scup. (This is a realistic combination of permits for otter trawl vessels fishing between Cape Cod, MA and Cape Hatteras, NC.) Aside from being confusing, the regulations limit a vessel owner's options because, in these situations, the most restrictive regulations apply. For example, if a vessel owner

with limited access multispecies and scup permits requests a vessel replacement, then the much stricter scup requirements would have to be complied with, even if multispecies is the primary fishery. In this situation, the vessel owner would not be allowed to replace the vessel and retain both of the permits, unless the original vessel was unseaworthy, the replacement vessel was of the same dimensions, and both vessels were owned by the same person. The owner would have to decide if the opportunity to increase the vessel size, which would be allowed under the multispecies FMP, is more valuable than the scup permit because the scup permit could not be reissued if the owner took advantage of the multispecies provision. A single set of regulations for all limited access permits in the Northeast Region would alleviate this in most cases, though it is still possible an owner might give up other limited access permits to take advantage of the size increase allowed under the lobster FMP. Such a decision would be required only if the size change exceeded 10% for LOA, GRT and NT or 20% in horsepower.

### **2.3.2 Problems With Differences in Permit History Transfers and Permit Splitting**

Under the multispecies, scallop, lobster, and black sea bass regulations, fishing and permit history may be separated from the hull when a vessel is sold, if there is agreement between the buyer and the seller. However, under the summer flounder, scup, Illex, Loligo \butterfish and mahogany quahog requirements, permit eligibility must transfer with the vessel if it is sold. Current multispecies regulations which prohibit permit splitting complicate the situation. If a vessel with both multispecies and scup permits is sold, then the seller could retain the multispecies permit and transfer it to another vessel. The buyer would still be eligible for a scup moratorium permit. However, due to the prohibition on permit splitting, if the scup permit is issued, then the multispecies permit would have to be cancelled.

The inconsistency regarding how permit histories are transferred is significant. It affects how people can enter or retain access to a fishery. By allowing the fishing and permit history of a vessel to be retained in writing, an owner gains more flexibility in selecting a replacement vessel. It also enables NMFS to determine a vessel's permit and ownership history more effectively.

The permit splitting prohibition was intended to prevent an increase in fishing effort and capitalization. The problem is that only multispecies has the "no-splitting" provision. Because of this, a multispecies permit could be revoked for circumstances that are not in that permit holder's control. As described above, this could occur if another permit is issued for a vessel that was sold and the multispecies permit was retained by the seller. Adopting a "no-splitting" provision in all plans would keep all current "permit packages" intact. This is similar to

several FMPs (summer flounder, scup, Loligo/butterfish, Illex and mahogany quahogs) where limited access permits always remain with the vessel hull, thereby effectively prohibiting the splitting of these permits when the vessel is sold.

### **2.3.3 Problems With Vessel Ownership Restrictions**

The provision in the black sea bass, scup, Loligo/butterfish, Illex and mahogany quahog regulations whereby the original vessel and the replacement vessel must be owned by the same person has proven to be impractical and has created unintended inequities. Most vessel owners must sell their current vessel in order to afford the purchase of a replacement vessel. Vessel owners who must use the proceeds from the sale of one vessel to finance the purchase of a replacement vessel may be unable to take advantage of the replacement provisions. This could result in some instances of fishers being forced to fish with unseaworthy vessels. Furthermore, the requirement serves no conservation purpose.

### **2.3.4 Problems With Upgrading Existing Permitted Vessels**

The summer flounder, black sea bass, scup, Loligo/butterfish, Illex and mahogany quahog regulations address upgrading the size and horsepower of a vessel only at the time of replacement. Therefore if there is no replacement, a vessel issued these permits could have length added and a larger, more powerful engine installed. If existing vessels can upgrade without restriction it confounds measures to control effort and capitalization in these fisheries over the long term.

### **2.3.5 Problems With Replacement Restrictions Based On Vessel Condition**

Restrictions in the scup, Loligo/butterfish, Illex, and mahogany quahog regulations specify that in order to be eligible for a moratorium permit, the replacement vessel must be replacing a vessel that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery during the moratorium. This eliminates the opportunity for voluntary vessel replacement in these fisheries. Because a vessel can't be replaced voluntarily if it is old or unsafe, it may have to keep fishing until it burns or sinks. This requirement compromises vessel safety, diminishes an owner's flexibility to replace a vessel at a time when the owner deems appropriate and prevents owners from taking advantage of opportunities to obtain new vessels.

### **2.3.6 Other Problems**

Only the multispecies, lobster and sea scallop FMPs allow

for the permanent voluntary relinquishment of limited access permits and eligibility. There may be situations where it is advantageous or desirable to voluntarily relinquish a permit, particularly if frequent reporting is required, or if it becomes necessary to choose between different baselines. This issue is, again, one of allowing more flexibility for limited access permit holders.

## **2.4 Management Objectives**

The objectives of these amendments are:

- 1) To establish consistency among all New England and Mid-Atlantic fishery management plans with vessel replacement, permit transfer, upgrade, and permit splitting regulations, and to establish consistency among all limited access permits on permit renewal.
- 2) To establish fishery management regulations which are practical, easily understood and which do not unnecessarily restrict the purchase and sale of commercial fishing vessels.
- 3) To improve efficiency in administering fishery management regulations on vessel replacement, permit transfer, vessel upgrades, and permit splitting by the National Marine Fisheries Service.
- 4) To promote the conservation of depleted fishery resources by preventing additional increases in the fishing power of vessels currently holding limited access moratorium fishing permits issued by the Northeast Region of NMFS.

## **3.0 Alternatives Including the Preferred Action**

Two alternatives are being considered for this action. The current and proposed measures are summarized in Table 1. The first is to maintain the current regulations. The second is to revise the regulations to establish provisions that are consistent for these FMPs. The benefits and costs of the alternatives are summarized in Table 3. The discussion in this section is subdivided into the same 6 categories shown in Tables 1 and 3 to facilitate the use of the tables by readers.

### **3.1 Alternative 1: No Action**

This alternative reflects the status quo, with all of the shortcomings identified in Section 2.3. As many as four different sets of regulations could potentially govern vessel replacements, permit transfers, and vessel upgrades. Similarly, vessels could potentially have several baselines established from which to measure vessel size and engine upgrades. Complications would continue to exist in permitting commercial vessels with multiple limited access permits whenever they are bought, sold, transferred or upgraded. For vessels issued Loligo/butterfish,

Illex, scup, or mahogany quahog limited access permits, in order to purchase a replacement vessel the following conditions must be met: (1) the original vessel was declared unseaworthy (or involuntarily left the fishery), (2) the replacement vessel was of substantially similar dimensions ( $\leq$  GRT, length), and (3) the same person owned both vessels. This means that a vessel owner has to wait until a vessel sinks, is declared unseaworthy or is destroyed before it can be replaced, even if that means fishing with a unsafe vessel. Commercial fishing vessels which possess both limited access multispecies permits and either scup, Loligo/butterfish, Illex, black sea bass, or mahogany quahog limited access permits will be governed by the more restrictive regulations, even if multispecies is the vessel's primary fishery. It will continue to be a laborious process for the NMFS to review vessel replacement requests, which increases the time it takes to respond to vessel owners requesting these actions. The No Action alternative has been in place for several years, and it has proven to be impractical, inefficient and compromising of maritime safety.

**3.2 Alternative 2: (Preferred) - Standardize Vessel Replacement, Vessel Upgrade, History Transfer, Permit Splitting, and Permit Relinquishment Regulations Across All Northeast Region Fishery Management Plans with Such Provisions; Establish Baseline Dates For Limited Access Vessels Without Them; Revise the Summer Flounder Replacement Baseline Date to be Consistent with Black Sea Bass and Scup and the Summer Flounder Upgrade Baseline Date; and, Standardize the Permit Renewal and Confirmation of Permit History Requirements for all Northeast Fisheries.**

The Preferred Alternative is as follows:

1a) Vessel Size: Allow one vessel upgrade, whether through refitting or replacement. The replacement vessel may not exceed 20% of the horsepower, and 10% of the LOA, GRT and NT of the vessel's baseline (vessel baseline - see item 3). Changes to LOA, GRT, or NT must be performed at the same time. A HP upgrade may be carried out separately from a vessel size increase.

1b) Ownership: Require that the fishing and permit history of a vessel and the replacement vessel be owned by the same person when transferring limited access permits to replacement vessels.

1c) Vessel Condition: Allow voluntary replacment of vessels, regardless of vessel condition.

2) Require that the fishing and permit history of a vessel transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement, signed by the buyer and seller, or other credible written evidence, verifying that there was an agreement by both parties that the seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

3) Require that vessel baseline specification dates be established for vessels without baselines (scup, Loligo/butterfish, Illex, black sea bass, mahogany quahog) as of the effective date of these amendments. Revise the replacement baseline date and establish an upgrade replacement date for summer flounder limited access vessels to be consistent with this newly established baseline date.

4) Authorize the permanent relinquishment of permit eligibility.

5) Implement a restriction on permit splitting, as a necessary administrative adjunct to allowing all limited access permits to be retained in writing by a vessel seller. This prevents a situation where the owner of a vessel with multiple permits could retain some permits for a replacement vessel and transfer the other permits to another vessel, subsequently increasing overall fleet capacity.

6) Require a onetime Confirmation of Permit History registration, and annual permit renewal.

#### **4.0 Environmental Assessment**

##### **4.1 Description of Affected Fisheries**

The following section briefly describes the commercial fisheries which would be affected by these amendments. Table 2 provides a summary of the number of limited access permits by category. In the 1997-1998 fishing year (the last year for which complete data are available), the total number of vessels with at least one limited access permit which could be affected by these proposed regulations was 4430. These brief descriptions are based primarily on information from the most recent FMPs or amendments.

###### **4.1.1 Summer Flounder Commercial Fishery**

Summer flounder supports an extensive commercial fishery along the Atlantic coast, principally from Massachusetts through North Carolina. NMFS records indicate that 1,056 vessels possessed a limited access summer flounder moratorium permit in 1997. The most concentrated fishing activity takes place in the EEZ during the winter trawl fishery off North Carolina, but significant catches are also made off the southern New England states and the Delmarva Peninsula. Generally, fishing activity follows summer flounder as it makes annual migrations from south to north and back to the south, and from offshore to inshore waters, and back offshore. Fishing effort is concentrated northerly and inshore in summer when a wide range of vessels have access to the stocks. In winter, effort is concentrated southerly and offshore, primarily with larger vessels. The Mid-Atlantic mixed species trawl fishery relies on summer flounder, scup, black sea bass, Loligo squid, winter flounder, witch

flounder, yellowtail flounder, and other species. Many of these species are also principal components of the southern New England trawl fisheries since stock migrations occur between the Mid-Atlantic Bight and this area.

Although the majority of landings are taken by otter trawls, summer flounder are landed by other types of fishing gear, including pound nets, crab otter trawls, shrimp otter trawls, gill nets and scallop dredges. Landings have been regulated since 1993 through specification of a coast wide harvest limit that is divided into a recreational component (40%) and a commercial component (60%). The commercial component is managed through a state-by-state quota, allocated on a percentage basis to each state based on historical landings. States receiving the largest quota shares are North Carolina (27.44%), Virginia (21.32%), New Jersey (16.72%), and Rhode Island (15.68%). Refer to the Final Environmental Impact Statement (FEIS) for Amendments 2 and 10 to the Summer Flounder, Scup and Black Sea Bass FMP for a more complete description of the fishery.

#### **4.1.2 Scup Commercial Fishery**

Scup supports an important commercial fishery along the Atlantic coast, with the majority of the landings historically made in the three states of Rhode Island, New York and New Jersey. In 1997, 964 vessels possessed a scup limited access permit. Two gears, otter trawls (74%) and shallow floating traps (12%), accounted for the majority of landings during this time period. Landings come from both state and EEZ waters, and coastwide landings peak in May of each year. The fishery has been managed since 1997 through a coastwide harvest limit that is allocated into a recreational component (22%) and a commercial component (78%). The commercial component is managed through a quota that is allocated to three seasonal periods based on historical landings. Refer to the FEIS for Amendment 8 to the Summer Flounder, Scup, and Black Sea Bass FMP for a more complete description of the scup fishery.

#### **4.1.3 Black Sea Bass Commercial Fishery**

Commercial black sea bass landings are primarily harvested in the EEZ from January through May, with peak commercial landings occurring in February of the year. Historically, New Jersey and Virginia have had the largest share of landings. Traditionally, two gears, otter trawls and fish traps/pots have accounted for the majority of commercial landings.

In 1997, 963 vessels held limited access black sea bass moratorium permits. The commercial fishery is managed through the use of a coastwide harvest limit allocated to a recreational component (51%) and a commercial component (49%). The commercial component is managed through quarterly coastwide quotas, with the allocation of quota to each quarter based on historic landings.

This year (1998) is the first year in which a commercial quota has been implemented. Refer to the FEIS for Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass FMP for a more detailed description of the black sea bass fishery.

#### 4.1.4 Loligo/Butterfish and Illex Commercial Fishery

The short-finned squid (Illex illecebrosus) and long-finned squid (Loligo pealei) are found throughout the North Atlantic. They are found in commercial quantities along North America from Newfoundland to Cape Hatteras. Both species undergo seasonal migrations into shelf waters off Newfoundland and Nova Scotia, and onto the continental shelf edge off southern New England and the Mid-Atlantic in spring and summer. Illex grow to a maximum length of about 35 cm (14 inches, dorsal mantle length) and live about 12 months. Loligo reach lengths of over 16 inches, dorsal mantle length, and also live about one year. However, most individuals taken in commercial catches are 3-8 inches long. The squid fisheries do not have a recreational component, though Illex is a popular bait for several recreational fisheries.

Domestic fishing effort occurs while the Illex are concentrated in large schools along the continental shelf. Virtually all (99%) of the directed fishery landings are during June-September from the area south of Delaware Bay. Illex move off the continental shelf in winter and spawning may occur offshore and to the south of Cape Hatteras. Domestic landings for Loligo are now generally distributed through the year.

Butterfish landings in recent years have been well below historic averages. The amount of fishing effort on this species has been consistently low for over a decade in response to the fact that the demand for butterfish in foreign markets (particularly Japan) has been low. It is unlikely that butterfish landings will increase greatly unless market demand improves.

In 1997, 428 vessels possessed a Loligo/butterfish moratorium permit and 73 vessels possessed an Illex moratorium permit. All three of these species are regulated through the specification of a domestic annual harvest level. If the domestic annual harvest level is attained, the directed fishery would be closed and landings would be restricted to an incidental catch level (2,500 lbs for Loligo and butterfish; 5,000 lbs for Illex). Such closures have not been required in the past, but may be in the future.

Refer to Amendment 5 to the FMP for Squid, Mackerel and Butterfish for a more complete description of these fisheries.

#### 4.1.5 Mahogany Quahog Commercial Fishery

Amendment 10 to the Surf Clam and Ocean Quahog FMP established a moratorium for the fishery for mahogany quahogs in Federal waters north of 43° 50' N. Latitude (the Maine Mahogany

Quahog Zone). This fishery operates both in Maine state waters and in the EEZ off the coast of Maine. The typical vessel in the Maine mahogany quahog fishery is a lobster-style hull ranging from 30'-40' in length. The ocean quahogs are harvested with a small dry dredge with a cutter bar limited to a maximum of 36" by state regulation. Daily landings are highly variable in response to market demand. The fishery is managed through the specification of a commercial quota, with mahogany landings from both state and federal waters in the Zone counted toward the quota. See the Environmental Assessment for Amendment 10 to the Surf Clam and Ocean Quahog Fishery Management Plan for a more complete description of the mahogany quahog fishery.

#### **4.1.6 Northeast Multispecies Commercial Fishery**

The multispecies fishery consists of thirteen species (Atlantic cod, haddock, pollock, yellowtail flounder, American plaice, redfish, white hake, red hake, silver hake, windowpane flounder, winter flounder, witch flounder, and ocean pout) and three management areas (Gulf of Maine, Georges Bank, Southern New England).

The multispecies fishery is the predominant fishery in the Northeast Region in terms of landed pounds and total number of vessels participating. It currently ranks third in the northeast in terms of revenue, after lobsters and sea scallops. It is a diverse fishery in terms of operations, gear types, vessel sizes, and target species. Many participants are seasonal, but the predominance of landings is attributable to full-time otter trawl vessels. The fishery is centered in New England, although many vessels land in the Mid-Atlantic. The Mid-Atlantic otter trawl vessels are often targeting other species, but regularly catch some multispecies groundfish species.

Typical gears utilized in the fishery include otter trawls, longlines, gillnets, and traps. Management measures used in the fishery include Days-at-Sea restrictions, closed areas, trip limits, size limits and gear restrictions. In 1997, 1847 vessels possessed a limited access multispecies moratorium permit. The Final Supplemental Environmental Impact Statement for Amendment 7 to the Northeast Multispecies Fishery Management Plan provides a much more detailed description of the fishery, including fishing ports and gear types.

#### **4.1.7 Atlantic Sea Scallop Commercial Fishery**

The sea scallop fishery is one of the most valuable fisheries in the U.S. in terms of ex-vessel revenues. In 1997, the number of vessels possessing a sea scallop limited access moratorium permit was 315. It has been estimated that 75% of the landings from Georges Bank occur during the spring and summer months. About 70% of landings from the Mid-Atlantic occur during the autumn and winter months. Sea scallop dredges account for

the majority of landings, with lesser amounts taken by trawls, and surf clam dredges. The largest ports for sea scallop landings are New Bedford, MA, Cape May, NJ, and Norfolk-Hampton, VA, though there are other ports with large landings in Maine, North Carolina and Massachusetts. Management measures used in the fishery include days-at-sea restrictions, size limits, gear and crew restrictions, possession limits and closed areas. A more complete description of the fishery is found in the Final Supplemental Environmental Impact Statement for Amendment 4 to the Sea Scallop Fishery Management Plan (1993).

#### **4.1.8 American Lobster Commercial Fishery**

In 1997, 3486 vessel owners possessed a federal limited access lobster permit. Of these, 3444 held commercial lobster permits. The majority of these are smaller vessels from Maine or Massachusetts ports, followed distantly by Rhode Island, New Jersey, New York and New Hampshire.

The fleet consists mainly of trap fishers and mobile gear fishers. In 1996, at least 901 mobile gear vessels possessed American lobster permits, while at least 2114 trap gear vessels possessed permits. New management measures for the fishery are currently being developed for the EEZ and are described in the Draft Environmental Impact Statement for Regulations for the American Lobster Fishery in the EEZ (1998). Amendment 4 to the American Lobster FMP profiles the fishery.

### **4.2 Environmental Impacts**

#### **4.2.1 Environmental Impacts of No-Action Alternative**

##### **4.2.1.1 Effects on Affected Species**

The no-action alternative would maintain the current vessel replacement, permit transfer, vessel upgrade and permit splitting provisions of the existing management regime. The permit restrictions are an intrinsic part of each FMP and are intended to limit fishing effort and either prevent or eliminate overfishing. The impacts associated with these measures were assessed in the respective amendments.

##### **4.2.1.2 Effects on the Environment**

The no-action alternative would not result in changes to existing fishing practices and, therefore, would not alter effects on the environment already identified in the FMP amendments that analyzed these measures.

##### **4.2.1.3 Effects on Flood Plains**

The previous FMP amendments found that the no-action

alternative would not adversely impact flood plains or wetlands and trails and rivers that are listed or eligible for listing on the National Trails and Nationwide Inventory of Rivers.

#### **4.2.1.4 Effects on Marine Mammals and Sea Turtles**

The no-action alternative would not result in changes to existing fishing practices by federally permitted vessels, and therefore would not alter current effects on marine mammals and sea turtles.

#### **4.2.1.5 Social/Cultural Impacts**

Under several FMPs, the no-action alternative would continue to implement rigid vessel replacement, permit transfer, vessel upgrade and permit splitting provisions which provide for little flexibility for vessel owners when buying or selling vessels, and could result in the continued use of vessels which are in need of replacement, but not yet unseaworthy. Under several FMPs, the no-action alternative would continue to prohibit voluntary vessel replacement and would require ownership of two vessels to accomplish a vessel replacement. This makes the purchase of a new vessel using the proceeds from the sale of an old vessel extremely difficult. The no-action alternative would continue to be confusing for vessel owners with several limited access moratorium fishery permits when conducting normal business transactions such as buying, selling, replacing or upgrading a vessel. The no action alternative would continue to allow unrestricted upgrading of some vessel in direct conflict with the requirements purpose to restrict fishing effort and capitalization.

### **4.2.2 Environmental Impacts of Preferred Alternative**

#### **4.2.2.1 Effects on Affected Species**

1a) Vessel Size: The Preferred Alternative which would allow for one vessel upgrade, whether through refitting or replacement, whereby the replacement vessel may not exceed 20% of the horsepower, and 10% of the LOA, GRT and NT of the vessel initially issued a limited access permit as of the baseline date will not result in adverse environmental and biological impacts. Although vessels would be allowed modest upgrades, the proposed regulations would disallow the ability to increase the size and horsepower of existing vessels holding scup, black sea bass, Loligo/butterfish, Illex or mahogany quahog limited access moratorium permits without limit. This limitation is likely to have some positive biological impacts because it will prevent increases in fishing capacity.

1b) Ownership: The Preferred Alternative requiring that the fishing and permit history of a vessel and the replacement vessel

be owned by the same person, rather than both vessels, will not result in significant additional positive or negative environmental impacts on scup, Loligo squid/butterfish, Illex, mahogany quahogs, or black sea bass. It would make purchasing a replacement vessel easier, but the Preferred Alternative is not likely to result in an increase in fishing effort for these species because the universe of vessels is already restricted by existing limited entry measures. It is primarily an administrative measure. The Preferred Alternative also would not impact the other species (multispecies, sea scallop, lobster and summer flounder) because it does not change the current regulations on this subject.

1c) Vessel Condition: The Preferred Alternative authorizing vessel replacement regardless of vessel condition will not result in positive or negative environmental impacts on affected species.

2) The Preferred Alternative for fishing vessel permit transfers, which would allow a permit to be retained by the seller if confirmed in writing by the buyer and seller, will not result in positive or negative environmental impacts on scup, Loligo/butterfish, Illex, mahogany quahogs, or summer flounder. It is an environmentally neutral measure which is entirely administrative. It would also not impact multispecies, sea scallops, lobster or black sea bass because the Preferred Alternative does not change current regulations on this topic for these species.

3) The establishment of vessel baseline specification dates for black sea bass, scup, Loligo/butterfish, Illex, summer flounder (for upgrades) and mahogany quahogs as of the effective date of this FMP amendment will similarly result in positive biological and environmental impacts. Owners of vessels holding these permits will no longer be allowed to increase existing vessel size and horsepower without limit.

4) The Preferred Alternative which would authorize the permanent relinquishment of permit eligibility in the black sea bass, summer flounder, scup, Loligo/butterfish, Illex, and mahogany quahog moratoria will result in positive biological and environmental impacts. This provision would provide for an additional opportunity for permit holders to exit moratorium fisheries, thereby resulting in less fishing effort for these species. It would not impact the other species (multispecies, scallop and lobster) because the Preferred Alternative does not change current regulations on this subject.

5) The implementation of a restriction on permit splitting is a necessary adjunct to allowing vessel sellers to retain limited access permits. It is necessary to implement the "no permit splitting" provision across all FMPs because it eliminates the possibility of having to revoke a permit which has been lawfully retained in writing under one FMP if another person is issued a limited access permit that automatically transferred with the vessel. The provision provides a clear standard for the

purchase and sale of vessels with moratorium permits in the Northeast Region. Also, without this restriction on permit splitting overall fishing effort could increase if someone retained a limited access permit, and other limited access permits transferred with the sold vessel. By preventing an increase in overall fishing capacity, this restriction creates positive biological and environmental impacts.

6) The Preferred Alternative which would require a onetime Confirmation of Permit History registration and annual permit renewal is an administrative measure. It could result in positive biological impacts if an inactive fishing vessel fails to either register for a Confirmation of Permit History, or renew its permit annually, and a permit was cancelled. In this manner, fishing effort for all species in the region could be reduced over time.

#### **4.2.2.2 Effects on the Environment**

The Preferred Alternative will bring consistency to current regulations regarding vessel replacement and upgrades, fishing history and permit transfers, and permit splitting. Most of the proposed changes are administrative, and will therefore impose no impacts on the environment. The provisions allowing for one small vessel upgrade, prohibiting permit splitting and allowing for the permanent relinquishment of permit eligibility could potentially result in some positive impacts on the environment by helping to limit overall fishing effort.

#### **4.2.2.3 Effects on Flood Plains**

The Preferred Alternative would not adversely impact flood plains or wetlands and trails and rivers that are listed or eligible for listing on the National Trails and Nationwide Inventory of Rivers.

#### **4.2.2.4 Coastal Zone Management Act**

The Preferred Alternative will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination will be submitted to the responsible state agencies for review under section 307 of the coastal Zone Management Act.

#### **4.2.2.5 Effects on Marine Mammals and Sea Turtles**

The Preferred Alternative will not have any impacts on marine mammals or turtles within the management unit of the FMPs that differs from those previously analyzed.

#### 4.2.2.6 Social/Cultural Impacts

The Preferred Alternative is likely to have positive social and cultural impacts. It would facilitate the purchase and sale of vessels for several FMPs. For these same FMPs, it would no longer be necessary to wait until a vessel is declared unseaworthy, or involuntarily leaves the fishery, before it is eligible to be replaced. Also, it would provide for slight increases in size and horsepower when a vessel is replaced providing some flexibility to industry participants seeking new vessels, yet not allowing more than a negligible increase in fishing power. Most importantly, it would simplify regulations and alleviate current complications and inconsistencies in permit transfers, vessel replacements, vessel upgrades, permit splitting and ownership restrictions for owners of vessels with limited access moratorium permits issued by the Northeast Region of NMFS. The Preferred Alternative will facilitate routine business transactions and allow individual owners to make business decisions without the artificial constraints posed by the current regulations.

#### 4.3 Rationale for Adoption of the Preferred Alternative

With the Preferred Alternative, the changes in the regulations for vessel replacement, permit transfer, permit renewal, and vessel upgrades will, in most cases, become less restrictive and will help to facilitate normal business transactions by making the regulations consistent and less confusing.

The fisheries that would be affected by this action have been thoroughly described and additional information is available in the Supplementary Environmental Impact Statements or Environmental Impact Statements prepared for Amendment 7 to the Northeast Multispecies FMP, Amendment 4 to the Atlantic Sea Scallop FMP, Amendment 4 to the American Lobster FMP, Amendment 5 to the Squid, Mackerel, Butterfish FMP, Amendments 2, 8 & 9 of the FMP for Summer Flounder, Scup and Black Sea Bass, and in the Environmental Assessments for Amendment 10 to the Surf Clam and Ocean Quahog FMP, and Amendment 10 to the Summer Flounder, Scup and Black Sea Bass FMP.

The Preferred Alternative will not significantly alter the natural or human environment. NOAA requires that five criteria be examined (see NAO 216-6) to determine the impacts of any proposed action: a) whether the action is expected to jeopardize the long-term productive capability of any stocks; b) whether the action is expected to allow substantial damage to the ocean and coastal habitats; c) whether the action is expected to have an adverse impact on public health or safety; d) whether the action is expected to adversely affect an endangered or threatened species or a marine mammal population; and e) whether the action

is expected to have cumulative adverse effects that could substantially effect target species or any related stocks.

The Preferred Alternative is not expected to have any of the impacts cited in these five criteria. The proposed action does not alter fishing activities so the action itself does not alter the impacts on habitat or species that were previously examined in the Environmental Impact Statements or Environmental Assessments prepared for the respective fishery management actions. The proposed action may impact public safety in a positive way by eliminating the provision that required vessels issued limited access permits to be found unseaworthy before they could be replaced. Under the proposed action, a vessel owner will be able to replace a vessel at any time the owner finds it to be necessary.

NAO 216-6 also requires consideration of the controversy associated with any proposed action and of the socioeconomic impacts anticipated. This action is not considered to be controversial, though it is likely that industry participants will have areas of disagreement on some proposed measures. The proposed action is likely to have positive socioeconomic impacts (see Section 5.1.1).

In summary, the Preferred Alternative would make existing regulations regarding vessel replacement, permit transfers, and vessel upgrades less restrictive to owners of vessels with Federal limited access moratorium fishery permits issued by the Northeast Region of NMFS. It would make the regulations consistent throughout the region and would increase the efficiency of the Federal government, facilitate normal business transactions, and generally improve the efficiency of the entire permit transfer and vessel replacement process.

#### **4.4 Finding Of No Significant Impact (FONSI)**

The Environmental Assessment (Section 4.0) serves as the environmental review and supports the conclusion that the proposed action will not have a significant effect on the human environment. The final determination is made by the Assistant Administrator for Fisheries (AA) and is circulated to all interested government agencies and interested parties for formal written comment during the agency review period. If the AA determines that a significant effect on the human environment exists, an Environmental Impact Statement would be necessary.

In view of the analysis presented in this document, it is hereby preliminarily determined that the Preferred Alternative will not significantly affect the quality of the human environment with specific reference to the criteria contained in NOAA Administrative Order 216-6, which revises NOAA environmental review policies and procedures and incorporates all the requirements of the National Environmental Policy Act regulations. Accordingly, the preparation of an Environmental Impact Statement for the preferred alternative will not be

necessary.

#### **4.5 Agencies Consulted in Formulating the Action**

National Marine Fisheries Service  
Mid-Atlantic Fishery Management Council  
New England Fishery Management Council

#### **4.6 Preparers of Environmental Assessment**

National Marine Fisheries Service

### **5.0 Regulatory Impact Review: Economic Impacts**

#### **5.0.1 Problem Statement**

The purpose of these proposed amendments is to achieve regulatory consistency on provisions regarding vessel replacement, permit transfers, vessel upgrades, and permit splitting for commercial fishing vessels which have been issued limited access Federal fishery permits by the Northeast Region of NMFS. The current situation, which has evolved over many years, have proven to be unnecessarily complex and restrictive, confusing for the fishing industry, and costly to administer.

#### **5.0.2 Objectives**

The management objectives are explained in Section 2.4 of this document.

### **5.1 Management Alternatives**

The No-Action alternative is described in Section 3.1 of this document, and the Preferred Alternative is described in Section 3.2.

#### **5.1.1 Beneficial Impacts of the Preferred Alternative**

Overall the benefit of this alternative is that it reduces complexity through standardization and it reduces the administrative burden on the industry and the government. A very large portion of the Northeast Region's fisheries management resources are currently devoted to some aspect of vessel replacement or history transfer. The amount of resources required to administered these provisions is far beyond that anticipated by the FMPs/amendments implementing these provisions. Likewise, these provisions have become so complex and confusing that the industry is devoting far more resources to these transactions than originally anticipated. In fact, there are several small businesses and lawyers who now specialize in guiding industry members through these transactions. Despite

such assistance, there are instances where vessel owners may have made bad decisions as the result of confusion over the requirements. The goal of these amendments is to make the process much simpler for all concerned. The following section further discusses the benefits of the specific proposals. Table 3 summarizes benefits and costs of this alternative.

1a) Vessel Size: The proposed amendments will allow for a slight tolerance (10% length & 20% horsepower) in upgrading replacement vessels. Existing regulations in the FMPs proposed for amendment require that the replacement vessel be equal or less than the original vessel in length and GRT. The benefit of the proposed amendment will be to allow for some flexibility on the part of a vessel buyer when obtaining a replacement vessel. This may reduce the cost of the vessel search and potentially the cost of the vessel if the universe of vessels to choose from is increased. Engine manufacturers have provided testimony that the 20% allowance for increases in HP is necessary because of changes in engine manufacturing which have resulted in across the board increases in engine horsepower. As a result, for a vessel owner to purchase effectively the same engine as their existing engine, it is necessary to allow some increase in HP. The benefit of this is that it is not necessary for a vessel owner to retrofit their vessel to accommodate a different model engine to comply with the upgrade restriction.

1b) Ownership: The proposed amendments will change existing regulations which require a person replacing a vessel to own both the existing permitted vessel and the replacement vessel. Ownership will be required of the fishing/permit history and the replacement vessel. The benefit of this is that the new measure will no longer prevent a person from using the proceeds from the sale of one vessel to finance the purchase of a replacement vessel. This restriction may have prevented some vessel owners from replacing their vessels. It may also have increased the cost of replacing a vessel if the vessel owner has higher finance charges associated with owning both vessels and not being able to use the equity from one to reduce the debt on the other.

1c) Vessel Condition: The proposed vessel replacement criteria allow for voluntary replacement for all FMPs, as opposed to some existing regulations which require that a vessel be declared unseaworthy before allowing replacement. The benefit of this is that it allows vessel owners to replace their vessels when they deem appropriate, rather than having to wait until a vessel is declared unseaworthy by a third party. The existing provision has raised serious safety concerns. Further, this allows more flexibility for a vessel owner to decide when to replace a vessel and take advantage of favorable opportunities or markets, which may reduce the cost of replacement.

2) The proposed amendments will allow all limited access permit holders to retain their limited access permits when they sell a vessel, provided that the buyer agrees to this in writing.

This will provide for more flexibility in the purchase and sale of vessels, and in choosing to remain in limited access fisheries.

3) The proposed amendments set baselines for use in determining both upgrade and replacement allowances. This provision provides an additional control on the further capitalization of these fisheries, consistent with the intent of the original amendments or FMPs.

4) The proposed amendments allow a vessel owner to relinquish voluntarily their limited access permits. A vessel with multiple baselines is bound by the most restrictive. The benefit of this provisions is that by relinquishing one or more of these permits, a vessel owner can choose the baseline most appropriate to their fishing practices and primary fishery.

5) As a necessary adjunct to allowing vessel sellers to retain limited access permits, it is necessary to implement a "no permit splitting" provision across all plans. By making this consistent across all plans, it eliminates the possibility of having to revoke a limited access permit which has been legally retained in writing by the seller when the buyer is issued a permit that automatically transferred with the vessel hull. This provision is necessary, and it provides a clear standard for the purchase and sale of vessels with moratorium permits in the region. Although it does require that "permit packages" be kept together, this is not a change from most current FMPs which require that all "permit packages" remain with the vessel hull. This is a benefit because it increases flexibility by allowing permits to be retained by the seller when a vessel is sold, provided that the buyer agrees in writing, rather than only allowing the "permit package" to remain with the vessel. This provision also provides some control over further capitalization of these fisheries. As an example, this provision prevents two part-time permits from becoming two full-time permits because it would be prohibited to split the permits and move the two permits from one vessel onto two.

6) The proposed amendments require a vessel owner to annually renew vessel permits annually by no later than the last day of a fishing year and to obtain a one-time Confirmation of Permit History, no later than the last day of the fishing year following the year the vessel was sold, sunk, etc. This provision will allow some latent permits to lapse, which will impact on the level of capital employed in this fishery in the long-term. It also provides a mechanism whereby a vessel owner can record their retention of history when they are unable to permit a vessel (a vessel must have a valid state registration or Coast Guard Documentation to receive a Federal permit). Vessel owners appreciate being able to receive confirmation that the NMFS has a record of their retention of history. Further, this provision will provide a record of history retentions that will prevent the agency from mistakenly permitting a vessel whose history was retained by the seller.

### 5.1.2 Potential Costs of the Preferred Alternative

The costs associated with these amendments are comparatively minor. The Preferred Alternative does maintain some restrictions on vessel permitting such as the allowance of only one upgrade, whether through refitting or replacement. Vessels without multispecies, scallop, or summer flounder permits will no longer be allowed to increase their vessel size or engine horsepower without limit. However, such upgrades were only possible if no other limited access permits were held. In addition, such upgrades had the potential to diminish the conservation aspects associated with those FMPs. The regulation prohibiting unlimited enlargement of vessel size and horsepower will not reduce any current annual revenues, nor will it impose any immediate compliance costs.

### **5.2 Executive Order 12866**

Executive Order 12866 "Regulatory Planning & Review," was signed on September 30, 1993 and established guidelines for promulgating new regulations and reviewing existing regulations. While the executive order covers a variety of regulatory policy considerations, the benefits and costs of regulatory actions are a prominent concern. The regulatory philosophy stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives. In choosing among regulatory approaches, the philosophy is to choose those approaches that maximize benefits to society.

The regulatory principles in E.O. 12866 emphasize careful consideration of the problem to be addressed. When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost effective manner to achieve the regulatory objective. Each agency shall assess both the costs and benefits of the intended regulation, and recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." A "significant regulatory action" is one that is likely to: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary

impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

As described in Section 5.1, by choosing the "preferred alternative" over the "no-action alternative," the benefits to society will be increased. With the "preferred alternative" the regulations for vessel replacement, permit transfer, and vessel upgrades will become simpler, less restrictive and will help to facilitate normal business transactions by making the regulations consistent.

The costs associated with the "preferred alternative" are either necessary, or will be offset by the conservation benefits to be gained. The prohibition on permit splitting is necessary if all limited access moratorium permits may be retained in writing. Consistency is necessary because vessels with multiple permits may be operating under mutually exclusive regulations. Under the current "no action" alternative, it has been necessary to revoke certain limited access permits which were retained by the seller when a buyer activated other limited access permits which transferred with the vessel. Also, by keeping "permit packages" together it eliminates the possibility for one vessel with multiple permits to eventually "create" several vessels with fewer limited access permits. The basis of these moratoria is to cap or reduce fishing effort. Without the splitting prohibition, effort could potentially go unchecked. It is necessary to have a "no-splitting" provision when permits may be retained in writing. The allowance of a one-time vessel upgrade, whether through replacement or refitting will provide for some flexibility, yet simultaneously promote conservation by putting an upper limit on capacity.

In summary, most of the regulations described in the Preferred Alternative are to be made less restrictive. Under the Preferred Alternative the process of vessel replacement, vessel upgrade, and permit transfer will be simpler and consistent across FMPs, as opposed to the No Action Alternative. The benefits associated with the Preferred Alternative will exceed the costs.

The potential impacts do qualify the action as a "significant regulatory action" according to the requirements of E.O. 12866 because the action raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Otherwise, the action itself imposes minimal costs. The Preferred Alternative will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

#### **5.4 Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act requires agencies to assess the impacts of proposed regulations on small business entities to determine if the regulations impose a "significant economic impact" on a "substantial number" of small entities. The Regulatory Flexibility Act defines a small business as a firm with receipts of up to \$2 million annually. This proposed action would amend six existing fishery management plans, the Northeast Multispecies FMP, the Atlantic Sea Scallop FMP, the American Lobster FMP, the Summer Flounder, Scup and Black Sea Bass FMP, the Squid, Mackerel, Butterfish FMP, and the Surf Clam and Ocean Quahog FMP.

Most of the vessels participating in these fisheries have gross revenues less than \$2 million and are small entities, according to the SBA criteria. If more than 20 percent of the small businesses in a particular industry are affected by the regulations, the regulations are considered to have an impact on a "substantial number" of these entities. These amendments will, therefore, have an impact on a "substantial number" of small business entities, because the regulations could potentially affect all of the 4430 vessels holding at least one limited access moratorium permit in the Northeast Region.

The economic impacts on small business entities are considered to be "significant" if the proposed regulations are likely to cause any of the following: a) a reduction in annual gross revenues by more than 5 percent; b) an increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; c) an increase in compliance costs as a percent of sales for small entities at least 10 percent higher than compliance costs as a percent of sales for large entities; d) costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or e) two percent of the small business entities being forced to cease business operations.

As described in Section 5.1.2, the costs associated with the proposed amendments are relatively minor, and as a result do not have a "significant" economic impact under the Regulatory Flexibility Act. These proposed amendments would implement new restrictions on permit splitting and vessel renewal requirements, vessel replacement, permit transfer, and vessel upgrade provisions to be consistent with other FMP's. The regulations will not reduce any current annual revenues, nor will they impose any immediate compliance costs. Therefore, the costs of compliance for small entities are expected to decline.

#### **6.0 Magnuson-Stevens Act Requirements**

Section 301(a) of the Magnuson-Stevens Act contains 10 national standards for fishery conservation and management, with

which all FMPs and amendments prepared by the Councils and the Secretary must comply. This section discusses the relation of this proposed action to the national standards, which are summarized below:

(1) Conservation and management actions shall prevent overfishing, while achieving, on a continuing basis, the OY from each fishery. Establishing a consistent set of vessel permit provisions makes no change to the underlying conservation and management programs implemented by these FMPs, in compliance with the national standard.

(2) Conservation and management measures shall be based upon the best scientific information available. As with national standard 1, establishing a consistent set of vessel permit provisions makes no change to the underlying conservation and management programs that were implemented in compliance with the national standard.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. Establishing a consistent set of vessel permit provisions makes no change to the underlying management programs that manage these stocks in compliance with this national standard. Further, this action indirectly recognizes the objective of this national standard by recognizing the interrelationship between the fisheries, as well as those between the stocks of fish.

(4) Conservation and management measures shall not discriminate between residents of different States. The proposed action is unrelated to state of residence and does not discriminate between residents of different States in any way.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources, except that no such measures shall have economic allocation as its sole purpose. The proposed vessel permit amendments eliminate the provisions that may have prevented reissuance of a limited access fishery permit to a replacement vessel. This may improve efficiency in the utilization of fishery resources by allowing vessels to retain the species associated with such permits.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. The proposed vessel permit provisions treat the fishing and permit history of each vessel as a unit, recognizing historic variations in the fisheries, as represented by the vessel fishing history.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication. The proposed vessel permit provisions are intended to simplify the vessel permitting process for both vessel owners and NMFS. This simplification will minimize the costs of the vessel permit process.

(8) Conservation and management measures shall, consistent with the conservation requirements of the Act, take into account the importance of fishery resources to fishing communities. The proposed vessel permit provisions will make vessel permit requirements easier for individual vessel owners to understand, and will make the vessel permit implications of vessel sales clearer to all parties. This recognizes the importance of limited access permits to fishing communities.

(9) Conservation and management measures shall, to the extent practicable, minimize bycatch. The existing vessel permit provisions may in some cases prevent reissuance of a limited access fishery permit to a replacement vessel, despite the fact that the vessel owner historically caught the species. In such cases, bycatch of the species may still occur during fishing operations but, without the proper limited access permit, such bycatch must be discarded. The proposed action would eliminate the vessel permit provision that prevented permit reissuance, and will therefore eliminate the resulting regulatory discards.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea. The existing vessel permit provisions may in some cases prevent an owner from replacing a vessel until a third party has determined that the vessel is unseaworthy. This requirement unreasonably prevents an owner from making an individual judgement that a vessel is unsafe and requires replacement. The proposed action would restore to each vessel owner the right to make such judgements concerning vessel safety.

## **7.0 Paperwork Reduction Act**

This section summarizes the costs associated with permit issuance. The costs calculations assume an average respondent wage and overhead of \$15/hour. The time necessary for filling out permit applications varies, depending upon whether or not it is the first time a permit has been requested for a specific vessel. Preprinted application forms are provided for vessels currently issued permits, and owners annotate the form to update or revise information. The previous amendments estimated this to take 0.25 hours, on average.

When a permit is requested for a vessel that was never previously issued a permit in the Northeast Region, an initial application form must be completed. The time required to do this was estimated in the previous amendments at 0.5 hours, on average. For purposes of this analysis it is assumed that most vessel permit transfers or vessel replacements involve two vessels that are currently issued Northeast Region permits. It is assumed that 20% of the time such requests involve a new vessel, and thus an initial application.

Based on the most recent cost analysis (labor, printing, distribution, computer time and handline), the average cost to the government for routine permit issuance is assumed to be

\$33/permit. The costs associated with permit reviews were previously estimated to average 1.0 hour at the GS-9 level (\$18.86/hour including overhead).

As outlined in the Environmental Assessment, the time that the industry and NMFS must devote to requests for vessel replacement, vessel permit transfer or vessel upgrade is much higher than previously estimated. In some cases, vessel owners are hiring professionals to assist them with such transactions and the costs associated with that assistance are not reflected here. A reestimate of the direct burden on the applicant and NMFS associated with these requests follows, assuming that 200 such requests are received each year. The time associated with these tasks has been doubled to reflect the greater average burden associated with these requests.

160 requests for vessels with Northeast Region permits:

NMFS review: $160 \times (18.86 \times 2)$	6,035
Issuance: $160 \times 33/\text{permit}$	5,280
Applicant time: $160 \times (.5 \times \$15)$	1,200

40 requests for new vessels:

NMFS review: $40 \times (18.86 \times 2)$	1,509
Issuance: $40 \times 33/\text{permit}$	1,320
Applicant time: $40 \times (1 \times \$15)$	600

TOTAL	15,944
-------	--------

Table 1 -- CURRENT AND PROPOSED VESSEL REPLACEMENT AND TRANSFER PROVISIONS

MEASURE	NEW ENGLAND			MID-ATLANTIC			SUMMARY OF REVISED PROVISIONS
	Multispecies & Scallop	Lobster	Black Sea Bass	Summer Flounder	Scup, Squid and Butterfish, and Mahogany Quahogs		
1. Upgrades & Replacements	a) 1 upgrade or replacement ≤10% GRT, LOA, NT - 1 upgrade or replacement ≤20% HP b) Permit history and replacement vessel owned by the same person	b) Permit history and replacement vessel owned by the same person	a) ≤ GRT, Length (Replacement) b) Both vessels owned simultaneously by the same person	a) 1 replacement ≤10% GRT, LOA, NT & 1 replacement ≤20% HP b) Permit history and replacement vessel owned by the same person	a) ≤ GRT, Length (replacement) b) Both vessels owned simultaneously by the same person c) sunk or unseaworthy		a) 1 upgrade or replacement ≤10% GRT, LOA, NT - 1 upgrade or replacement ≤20% HP. b) Permit history and replacement vessel owned by the same person
2. Vessel Baseline	Specifications at qualification	n/a	Current vessel's specifications	Specifications at 1/2/98	Current vessel's specifications		For vessels without baselines and fluke, effective date of amendments
3. Permit History Transfers	Stays with vessel unless retained in writing	Stays with vessel unless retained in writing	Stays with vessel unless retained in writing	Stays with vessel	Stays with vessel		Stays with vessel unless retained in writing
Splitting Restriction	Multispecies only	No	No	No	No		No splitting
5. Voluntary Permanent Relinquishment of Eligibility	Authorized	Authorized	Not authorized	Not authorized	Not authorized		Authorized
6. Renewal & Registration	Annual permit renewal and CPH	Annual permit renewal and CPH	None	None	None		Onetime CPH & annual permit renewal

1. Excluding lobster, because current upgrade restrictions do not exist June 10, 1998 - (tbl5.wpd)

Table 2 -- LIMITED ACCESS PERMITS BY CATEGORY 1997-98

<u>PERMIT</u>	<u>NUMBER OF VESSELS</u>
Black Sea Bass	963
Summer Flounder	1,056
Lobster	3,486
Multispecies	1,847
Mahogany Quahogs	35
Scallops	315
Scup	964
Loligo/Butterfish	428
Illex	73

<u># OF PERMITS/VESSEL</u>	<u>NUMBER OF VESSELS</u>
1	2,351
2	931
3	469
4	218
5	164
6	233
7	55
8	9

NUMBER OF VESSELS WITH ONE LIMITED ACCESS PERMIT = 2,351

NUMBER OF VESSELS WITH MORE THAN ONE LIMITED ACCESS PERMIT = 2,079

TOTAL NUMBER OF VESSELS WITH AT LEAST ONE LIMITED ACCESS PERMIT = 4,430

Table 3 -- BENEFITS AND COSTS OF THE PREFERRED ALTERNATIVE

		BENEFITS	COSTS
1. a) 10%/20% size b) Both vessels owned by same person c) Voluntary replacement	a) Flexibility - potentially reducing cost of search and purchase (wider universe of vessels). Engine - same model reducing cost of retrofit. b) Potentially unable to replace, higher finance costs during interim of transaction c) safety/flexibility	a) Potential increase in capitalization - believed to be negligible b) None c) Potential increase in capitalization - believed to be negligible	
2. History transfers with vessel	Flexibility	None	
3. Baselines	Reduces potential for further overcapitalization	None	
4. Relinquishment	Flexibility	None	
5. Splitting	Control on further overcapitalization	None	
6. Renewal	Some latent permits may lapse Allows all to register history	Potential small increase in burden, which may be offset by reduced complexity	
ALL	Standardization reduces complexity and confusion Reduces administrative burden on industry and agency	None	



**Vessel Permit Consistency Amendment**

**Addendum**

**Changing or Eliminating Vessel Replacement  
and Upgrade Restrictions on Vessels Less Than 30 Feet**

**Background Information**

**Prepared by the**

**New England Fishery Management Council  
5 Broadway  
Saugus, MA 01906  
Tel (781) 231-0422 Fax (617) 565-8937**

**In consultation with the**

**Mid-Atlantic Fishery Management Council  
Federal Building, Room 2115  
300 South New Street  
Dover, DE 19901-6790  
Tel (302) 674-2331 Fax (302) 674-5399**

ADDENDUM  
TO PUBLIC HEARING DOCUMENT

New England and Mid-Atlantic Councils Seeking Public Comment on  
Changing or Eliminating Vessel Replacement and Upgrade  
Restrictions on Vessels Less Than 30 Feet

The New England and Mid-Atlantic Fishery Management Councils are seeking public comment on changing or eliminating vessel replacement and upgrading restrictions on vessels less than 30 feet which possess limited access Federal fishery permits. Some fishing industry members have suggested that vessels less than 30 feet should be made fully or partially exempt from current vessel replacement and upgrade restrictions.

The Councils request public comment on the necessity of an exemption, and request input on any alternatives to the proposed elimination of restrictions on vessels less than 30 feet.

Possible alternatives could include:

- \* Exemption from all upgrade restrictions (length, tonnage, HP) (up to an upper limit)
- \* Exemption from only length and tonnage upgrade restrictions (up to an upper limit)

**Vessel Permit Consistency Amendment**

**Addendum**

**Changing or Eliminating Vessel Replacement  
and Upgrade Restrictions on Vessels Less Than 30 Feet**

**Background Information**

Prepared by the

**New England Fishery Management Council  
5 Broadway  
Saugus, MA 01906  
Tel (781) 231-0422 Fax (617) 565-8937**

In consultation with the

**Mid-Atlantic Fishery Management Council  
Federal Building, Room 2115  
300 South New Street  
Dover, DE 19901-6790  
Tel (302) 674-2331 Fax (302) 674-5399**

### Purpose and Need for Action

The existing upgrading restrictions apply to all vessels regardless of size, including vessels less than 30 feet in length. While horsepower and length restrictions can be readily applied to small vessels, the limitations on increases in gross registered tonnage is problematic. Small vessels of less than five net tons are not required to be documented by the Coast Guard. Because many of these vessels are registered with individual states rather than documented, they may not have been measured to determine their tonnage. Requiring the owner to determine the tonnage for a fisheries permit imposes an additional regulatory burden. Tonnage measurements on vessels of less than five net tons are difficult to determine and are subject to great variability. This limits the opportunity of vessel owners to purchase replacement vessels without inadvertently exceeding the upgrading restrictions. It also limits the ability of vessel owners to improve the safety of their fishing operations by purchasing a different vessel size or design.

In the case of some permit categories – notably the multispecies small vessel limited access category, the multispecies hook category, the summer flounder fishery, and the scup and black sea bass fisheries – there are other effort control measures in place that may make strict vessel upgrade restrictions on small vessels unnecessary.

In addition, the current limits on vessel upgrades are intended to prevent excessive increases in fishing capacity. It isn't clear that a fixed percentage increase on a small vessel (for example, from 25 feet to 27.5 feet in length) has the same relative effect on overall capacity that the same increase has on a larger vessel (from 90 to 99 feet).

### Description of Affected Fisheries

Table 1 lists the number of limited access permits issued in the Northeast Region for vessels 30 feet or less in length, as of March 18, 1998. It does not include the number of scup and black sea bass permits, as moratorium permits can be requested until August 18, 1998 for these two fisheries. There are a total of 1,151 permits on vessels 30 feet or less in length in the Northeast Region, but only 320 of those permits are in limited access fisheries. Some vessels possess permits in more than one limited access fishery; the 320 permits are issued to 290 vessels.

The largest number of small vessel permits are held in the multispecies and illex fisheries. In the multispecies fishery, 149 permits are issued to small vessels in four permit categories. 90 of these permits are in the hook or small vessel multispecies categories. Vessels in the small vessel limited access category may fish an unlimited number of days, but may not land more than 300 pounds of regulated species per trip, and are subject to other restrictions. Vessels in the hook category are limited to 88 days-at-sea and may not fish more than 4,500 hooks. Because these permit categories have effort control measures in place that are effective regardless of vessel size, they are not included in the landings analysis shown below. Vessels in the multispecies fleet days-at-sea category are limited a fixed number of days-at-sea in each fishing year.

Vessels 30 feet or less in length catch a small proportion of the overall harvest in the Northeast Region. Table 2 compares the total 1997 landings by all permit holders to the landings from vessels less than 30 feet in length in three permit categories: multispecies fleet days-at-sea, summer flounder moratorium, and illex moratorium permits. The table also shows landings of some major species. (The totals in the table between permit categories cannot be added to determine total landings for vessels 30 feet and less in length because some vessels hold permits in more than one category.)

Landings for small vessels within these three permit categories (multipspecies fleet DAS, summer flounder, and illex moratorium) were examined to determine if there were differences in landings for vessels that were 25 feet or less in length from those between 25 and 30 feet. Of the 218 permits in these two size categories, 74 vessels reported landings in 1997. An average landing per active permit was determined in each category. This figure is a poor indicator of the capacity of vessels in these categories, as there is one vessel in each category with a large amount of landings that inflates the average. For this reason, the average is shown both with and without the permit with the greatest landings included. This problem is best illustrated by examining landings for illex moratorium permits. In this category, vessels between 25 and 30 feet in length actually have a lower average landings figure than the smaller vessels if the catch of the vessel with the highest landings are removed. With this catch included, the average for these vessels is over twice that for the vessels 25 feet and less in length. Table 3 summarizes this data.

## Environmental Impacts

### Effects on Affected Species

Even with the high landings removed from the one vessel that inflates the average catch, there is a difference in average landings by active permits between vessels 25 feet or less in length and those over 25 feet in length. If all vessels in the smaller size category were to upgrade to the larger category, there may be an increase in landings for small vessels. For each permit category, potential landings were estimated based on permits catching fish at the 1997 rate of vessels between 25 and 30 feet. This estimate was done for active permits and for all permits, since some owners of inactive permits may choose to resume fishing if they can upgrade their vessel. This information is presented in Table 4. To put these estimates in perspective, the potential landings are also shown as a percentage of total 1997 landings for all permits.

The multispecies fleet days-at-sea vessels and illex fisheries are managed through the imposition of gear restrictions or limits on fishing time, so an increase in vessel size may result in increased landings. The summer flounder fishery, black sea bass, and scup fisheries, however, are managed by a quota system. Determination of the quotas is not based on vessel size, so allowing upgrades for small vessels will not increase overall landings. It may, however, result in some redistribution of landings among different size vessels.

In the case of the multispecies small vessel limited access vessels, landings are limited to 300 pounds per trip. If by increasing vessel size a permit holder can significantly increase the number of trips, landings may increase. Permit holders in the multispecies hook category are limited to a fixed number of days-at-sea and a limited number of hooks. An increase in vessel size (within some maximum limit) is unlikely to significantly increase landings in this category.

#### Social Impacts

Based on numerous comments received by the NEFMC at public hearings for many different fishery management proposals, fishermen and others perceive that a reduction in the regulatory burden for small vessels will have positive social impacts on coastal communities. Any revision will likely make it easier for vessel owners to replace old or unseaworthy vessels. This will improve the overall safety of these vessels. A change could also reduce costs, as it may remove the requirement for vessel owners to pay for a tonnage measurement of their vessel to comply with permitting regulations. Because vessels owners may be able to increase vessel size (perhaps up to a some maximum size), which may result in an increase in landings, overall revenues for this sector may increase.

Changing or removing these requirements may also reduce government administrative costs. A simplified system for vessels in these length categories may reduce the administrative and enforcement burden. An upgrade requirement based solely on length, for example, would reduce the number of vessels that NMFS is required to verify tonnage calculations.

Table 1  
 Northeast Region Limited Access Permits  
 Vessels 30 feet or less in length  
 (As of March 18, 1998)

Permit Category	Number
Multispecies Fleet DAS	58
<i>Multispecies Small Vessel</i>	<i>14</i>
<i>Multispecies Hook</i>	<i>76</i>
Multispecies Large Mesh Fleet DAS	1
Fluke Limited Access	52
Scallop Full-Time Limited Access	1
Scallop Occasional Limited Access	1
Loligo/Butterfish Moratorium	7
Illex Moratorium	109
Total Permits	320
Total Vessels	290

Total Northeast Region permitted vessels 30 feet or under in length: 1,151  
 Scup/black sea bass not included.

Table 2  
Landings for Selected Permit Categories  
(pounds)

	All NER Permits	Multispecies Fleet DAS 30' or less	Summer Flounder Moratorium 30' or less	Illex Moratorium 30' or less
Total Landings	1,514,927,483	495,063	216,866	94,591
Cod	24,118,612	311,819	20,516	70,550
Haddock	2,909,115	6,275	0	0
Fluke	8,937,446	15,213	19,868	111
Scallops	13,238,050	2,589	0	1,228
Squid	66,124,920	0	42,355	1,417
Monkfish	25,955,925	27,551	7,440	15

Table 3  
Vessels 30 feet and under in length  
Landings by two size categories

	Multi- species 25' or less	Multi- species 25'-30'	Summer Flounder 25' or less	Summer Flounder 25'-30'	Illex 25' or less	Illex 25'-30'
Permits	27	31	31	20	55	54
Permits that landed fish in 1997	11	20	13	12	11	7
Total Landings	99,867	395,196	50,050	166,816	31,864	62,727
Cod	82,923	228,896	18,236	2,280	17,977	52,523
Haddock	22	6,253	0	0	0	0
Fluke	1,956	13,257	4,454	6,611	1,959	48
Scallops	0	2,589	0	0	0	1,228
Squid	0	0	0	42,355	0	1,417
Monkfish	18	37,017	4,105	3,335	15	0
<b>Average lbs/active permit</b>	<b>9,079</b>	<b>19,760</b>	<b>3,850</b>	<b>13,901</b>	<b>2,897</b>	<b>8,961</b>
Highest landings by one permit	31,347	165,439	20,999	110,631	20,999	58,061
Average lbs/active permits w/o maximum	6,852	12,092	2,421	5,108	1,087	778

Table 4  
 Projected Landings (pounds)  
 (based on 1997 Average Landings)

	Multispecies Fleet DAS, 30' or less	Summer Flounder, 30' or less	Illex Moratorium, 30' or less
Total permits	58	51	109
Active permits, 1997	31	25	18
1997 Landings, all species	495,063	216,866	94,591
1997 average landings, active permits 25'-30'	19,760	13,901	8,961
Projected landings, active permits	612,554	347,533	161,298
Projected landings, all permits	1,146,068	708,968	976,749
Percentage of 1997 NER overall landings	0.0757%	0.0468%	0.0645%

Projections based on 1997 average landings for vessels between 25 and 30 feet in length (25 < vessel ≤ 30)



APPENDIX 2

**APPENDIX  
TO  
VESSEL PERMIT CONSISTENCY AMENDMENT**

**Summary of Public Hearings and Comments Received**



**CONSISTENCY AMENDMENT  
20 JULY 1998 RIVERHEAD, NY**

Hearing officer Bob Hamilton opened the hearing at 1910 hrs. Rick Pearson (NMFS/NERO) and nine members of the public (Dave Aripotch, Brian Trujillo, Pat Augustine, Rick Beckman, Anthony Zucco, Don Ball, Bruce Beckwith, Donald Kearsley, and Tony Songstad) were present. Tom Hoff of MAFMC staff attended.

All nine fishermen spoke for the record and were unanimously opposed to the Addendum to the Public Hearing Document that was soliciting comments on changing or eliminating vessel replacement and upgrade restrictions on vessels less than 30 feet.

Representative comments on this Addendum included: 1) this is an allocation issue and not conservation (Aripotch), 2) everybody should be treated equally (Kearsley, Songstad, and Ball) and 3) Augustine recounted the complete opposition of the Summer Flounder Advisory Panel to allowing significant vessel upgrades.

Mr. Hamilton then directed the public's attention to the overall Amendment. Many of the same sentiments were expressed in that the public supported the preferred alternative as long as it was fair and equitable to all fishermen. They absolutely wanted the criteria to be uniform throughout the various fisheries, vessel sizes, and areas.

The largest concern among the fishermen was what actually constituted the "size" of the vessel. Different vessel size (especially length) is expressed differently in the various actual documentation records (Coast Guard, NMFS, etc.). Mr. Pearson clarified that NMFS would accept a variety of documentation. The NMFS initial thoughts were that the Coast Guard documentation would be the starting point, but that NMFS would accept a one time correction to the size of the vessel from a marine surveyor or engine manufacturer. After considerable discussion on the importance of documented vessel size, it became abundantly clear that anyone considering an upgrade to his vessel, should work closely with NMFS long before any contracts are signed or work begun, in order to avoid any confusion about what is actually allowable.

The hearing was closed at 1955 hrs.

**CONSISTENCY AMENDMENT  
21 JULY 1998 TOMS RIVER, NJ**

Hearing officer Bruce Freeman opened the hearing at 1910 hrs. Council members Dusty Rhodes and Charlie Bergmann were also present. Rick Pearson (NMFS/NERO) and four members of the public were present. Tom Hoff of MAFMC staff attended.

Mr. Bergmann, speaking as an individual and not representing the Council or the State of New Jersey, completely opposed the Amendment. He provided a written statement (attached) that expresses concerns over the restrictions that would be imposed with this Amendment on the developing mackerel and herring fisheries. He believes that with quota management there really is no reason for these proposed measures restricting upgrades and replacement.

Mr. Jim Lovgren, understood Mr. Bergmann's concerns but supported the NMFS Amendment and agrees that uniform measures should be applied to all fishermen. He strongly opposed the exemption for vessels under 30 feet. He also believes that there should be a time limit that a non used permit is allowed to be kept. He proposed that if a vessel sinks, it has to be replaced in three years or the permit expires.

Mr. Bergmann, while he does not support the Amendment in any way, said that he also was opposed to any exemption for vessels less than 30 feet because that would only ever allow an increase in capacity.

Mr. Rhodes clarified that the Lobster FMP would not be affected with this Amendment. A discussion followed and it may be appropriate to re-evaluate this position since numerous lobster boats also have multispecies permits and other permits. Mr. Lovgren again stated that all vessels and fishermen should be treated equally and that lobster boats should be included in the 10% restrictions, just like everyone else.

Mr. Tom Fote, Jersey Coast Anglers, expressed serious concerns about allowing 30 foot and smaller vessels to have unrestricted upgrades. There entire association is concerned over allowing increasing effort in the Northeast fisheries.

The hearing ended at 1945 hrs.

i.) consist hear sum VA. rjs

FAY to  
Rich  
Seagraves  
NMF

Public Hearing Summary on Consistency Amendments  
Lake Wright Quality Inn  
Norfolk, VA  
July 21, 1998

The hearing was called to order at 7:00 PM by hearing officer Jack Travelstead. MAFMC staff present was Rich Seagraves. Twelve members of the public were present. Mr. Seagraves presented the Amendments.

James Dawson is restricted by the size of his current vessel which is 25 ft in length. He favored the exemption on upgrade restrictions for vessels less than 30 ft in length. He would like to switch from an outboard to a diesel engine. The two types of power are very different and the Councils and NMFS should recognize this. He fishes with 100 pots or less. His vessel's small size restricts his activity. He is concerned about safety issues and would like to put an inboard in his vessel. The Councils need to recognize the complications of exchanging a diesel for an outboard motor. It would make his boat much safer but heavier, he supports the addendum that would exempt vessels less than 30 ft from upgrading restrictions.

Charles Amory, LD Amory & Co. Inc., asked if the 30 ft exemption was approved, would the vessels be capped at 30 ft in length? He agreed that fishermen will have a difficult time replacing their engines while meeting the 20% restriction on increases in HP. He questioned the concept of limiting the size and HP of individual vessels given how the FMPs have evolved over the years. If all the fisheries are regulated by days at sea or quota restrictions, why is still necessary to restrict vessel size and HP?

James Fletcher, United National Fishermen, stated for the record that the document that he received from the New England Council was very misleading. The cover of the document he received from the NEFMC would lead the reader to believe that the amendments only applied to vessels less than 30 ft. A fishermen with a larger vessel could have concluded that they would not be affected by the Amendments. He also objected to the way the Councils split the permits in the Atlantic mackerel, squid and butterfish FMP. The Council split the permits when they introduced limited entry for the squids, they took permits from people who did not meet the qualifying criteria. He generally favored the consistency provisions of the Amendments but he has a real problem with the numbers presented in the Amendments concerning the number of permitted vessels. He noted that in one section the document states that there are 2,079 vessels which hold multiple permits. The numbers in the document are misleading. No where in the document are there provisions for increasing the number of vessels when the stocks are rebuilt. The Council FMPs restrict fishing activity but do not contain provision for fishery expansion once the stocks recover from supposedly overfished conditions. How can the stocks be overfished by the number of vessels indicated in the document? The document gives the number of permit holders but fails to meet the requirements of the Magnuson act which requires that a description of the fleet be given, especially with respect to the size of the vessels and capacity of the

fleet. None of the current Council FMP's give a description of size of the vessels in the fleet. The whole document is based on the number of permits and not on fleet capacity, someone needs to address fleet capacity issues. The numbers in the document are very misleading. If you need to replace your engine in the future it will be difficult to do so without exceeding the 20% hp restriction. Table 2 in the document indicates that there are 1056 summer flounder permit holders and in previous documents NMFS has indicated that there were 1321 summer flounder permit holders. There is no way to verify which number is correct. The numbers in Table 2 are wrong. How can NMFS base a public hearing on a document with numbers that are completely inconsistent.

Harry Doernthe, black sea bass fishermen from Virginia, stated that the only permit he has is for black sea bass. He asked that if he upgraded his vessel according to the Amendments as proposed and a hurricane sank his boat, would he be allowed to replace his vessel or would the Amendments prohibit a second replacement? He was strongly opposed to exemption on upgrade restrictions for vessels less than 30 ft. He felt that there could be exemptions on HP and tonnage but all vessels should be restricted to a 10% increase in length. No vessel should be allowed to increase more than 10% of their LOA, regardless of their size. He supports the amendments as written for vessels larger than 30 ft. He strongly supported the idea that there be no permit splitting. He likes the idea of voluntary permit relinquishment. He likes the way the black sea bass plan is currently written with respect to permit history. He favors the allowance of retaining the permit if you sell the vessel.

Larry Snider supports standardization of permitting restrictions across the board. He is opposed to the addendum with respect to allowing vessels less than 30 ft to increase more than 10% in length. However, he did not have a problem with exempting small vessels from the 20% HP restriction, but they should be restricted in growing more than 10% in terms of tonnage.

Luke Negangard stated that he holds a black sea bass permit and fishes with hook and line. Why don't the Councils consider limiting hold capacity? His vessel has a hold capacity of about 1000 pounds. He pointed out the problems fishermen are having replacing their old engines and still stay within the HP restrictions. Because of the new emission requirements, engine manufacturers are adding electronic controls to the engines. The result is that the new engines generate greater horsepower for the same displacement. The 20% HP increase restriction is going to make it very difficult for fishermen to replace their engines in the future. He recommended that the Councils increase that to at least 30% in terms of HP upgrades. More emphasis should be placed on limiting hold capacity.

Tim Daniels commented that he has a history permit in the summer flounder fishery (his vessel sank). He is having a very difficult time finding a replacement vessel. He has been looking for some time and even with the 10% and 20% allowances he can't find a suitable replacement vessel. There aren't any new vessels being built and these rules are forcing people to work with junk.

Al Maynard pointed out that the document refers only to individuals in reference to vessel ownership. What about corporations or other business arrangements, is this a change in the FMPs?

The hearing was adjourned at 8:10 PM.



# New England Fishery Management Council

## Public Hearing Summary Vessel Permit Consistency Amendment

Peabody, MA  
July 30, 1998

**Chair:** Ms. Barbara Stevenson

**Council staff:** Tom Nies

**Attendance:** Vito Calomo, Rick Pearson, Dave Ellenton, Bob Knight, Daniel Dunbar

Daniel Dunbar, F/V Sundance: Owner of a 42 ft boat, would like to upgrade but current restrictions make it difficult. The places he used to fish with his boat are now closed; if he wants to continue fishing he needs a bigger boat to move offshore. Does not want to buy a permit with a used boat. Recommends doing away with length and tonnage limit upgrade restrictions, keep the horsepower limit in place. The restrictions prevent upgrading to a safer boat. The way things are going, looks like the goal is to do away with the small boat fleet.

Bob Knight, F/V Sheila Ann: Currently owns a 35 foot boat, 12 net tons, 220 horsepower. Concerned because existing upgrade restrictions make it impossible to replace his 26 year old boat with a new boat of the same length. This boat is getting tired and needs to be replaced for safety reasons. Even though many Canadian-built vessels can be imported because they measure 5 net tons, the gross tonnage measurement results in an increase over the upgrading limits. Because of design differences, new boats of the same length have a tonnage measurement that exceeds the upgrading limit. Even replacing the engine in his boat with the current model results in a horsepower increase of over 20%. Recommends exempting smaller vessels from the requirements or increasing the upgrade allowance for these vessels.

Vito Calomo, Executive Director, Gloucester Fisheries Commission: Questioned whether the amendment applies to lobster vessel. (Staff replied that the upgrade restrictions do not, but some of the other provisions – permit splitting prohibition, confirmation of permit history, etc. – will apply). Does not want to see upgrade restrictions applied to pelagic fisheries **at this time**. Delivered written statement.

Barbara Stevenson, Chair: To summarize, comment received expressed concern over applying the limitation to smaller vessels, discrepancies in tonnage measurement systems, and over safety issues resulting from the limits in vessel upgrades.



Mr. and Mrs. Edward T. Smith  
7605 Worcester Highway  
Newark, MD 21841

June 30, 1998

Dear Sirs,

Regarding Amendment 11 to the Black sea bass plan:

Most of the proposals are reasonable except the upgrade and replacement measures are too restrictive. Such upgrades are already limited by cost. Upgrades improve safety.

A 220 hp diesel upgraded to 400 hp can make a 16 hour day into a 12 or 14 hour day. It's a considerable social impact when a man must work an extra 4 hours a day because of a law that won't allow him to upgrade an engine more than 20%.

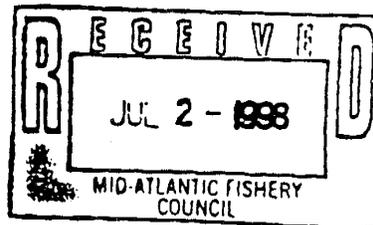
Special consideration should be given to the cultural impact of the loss of traditional wood pot building. Men still building and using these pots are suffering hardship trying to maintain this art.

Mr. Smith was interviewed and photographed building a wood bass pot for the Delmarva Folklife Project of the Mid-Atlantic Arts Foundation. He was asked how this art form could be preserved. The sea bass laws discourage using wood pots; favoring trawling and wire pots. If only wood pots were allowed, no other regulations would be necessary. There are only three boats in Delaware and Maryland still using wood pots. They should be exempt from at least the upgrade and replacement measures as long as half or more of their pots are wood.

Sincerely

Mr. and Mrs. Edward T. Smith

*Edward T. Smith* *Beverly K. Lynch*



July 21, 1998  
Charles Bergmann  
PO Box 282  
Cape May, NJ 08204

Public Hearing Comments  
Consistency Amendment  
Toms River, NJ

Thank you for having a hearing on something that is so very important in New Jersey. While I am a member of both the Mid-Atlantic Fishery Management Council and the New Jersey Marine Fishery Council, my comments tonight are my own and in no way a reflection of the views of either council.

The history of this Amendment starts with concerns raised by National Marine Fisheries Service, one being the ability to easily communicate the different regulations to fishermen and the reduction of workload at the region level. While I can agree the regulations regarding vessel replacement and upgrades can be confusing one wonders from what arena the confusion comes. Replacement in the Mid-Atlantic FMP'S are very straight forth. One may replace a vessel and retain its permit if the vessel either sinks or is deemed unseaworthy by the Coast Guard. While this will appear overly burdensome to some managers it still allows fishermen to rebuild existing vessels. One can rebuild an existing vessel just as easily as one can build a new one.

With the desire expressed by both the New England and the Mid-Atlantic Councils to develop the herring and Atlantic mackerel fisheries are we going to start pigeon holing fishermen again. How are we going to encourage fishermen to enter these fisheries and tell them that if they rebuild their vessels to be effective in these fisheries that they will then lose whatever other fishing permits they now have? Why would we want a scalloper to be restricted in rebuilding his vessel when vessel size is not a factor in the sea scallop fishery? Scallop vessels are restricted by their dredge size, crew size, and DAS. With the reductions that are sure to come in the DAS program why would we want to discourage New England fishermen from entering either the herring or mackerel fisheries by not letting them have the ability to increase their vessel size to an effective level? What do we tell a flounder fisherman when he wants to have the ability to enter either of the pelagic fisheries that by doing so he will lose his other permits? How many times are we going to place fishermen into little slots further restricting their ability to operate at a profitable level? Surely there has to be a better mousetrap.

Maybe instead of hindering the development of the pelagic fishery we should look to other measures to control effort in our fisheries. Could we look at possible trip limits rather than vessel replacement or upgrades as an effort control? I am sure that there is no one answer but by moving forward with this amendment we will surely give a large boost to the shipyards and builders in this great nation. Many fishermen have expressed the desire to increase the size of their vessels for comfort, safety, and the ability to travel great distances but do not have the necessary capital to do so at this time. We are going to force these fishermen to borrow capital and rebuild now instead of at a later date just to make life easier on NMFS. Some day we must all look into the mirror and I can only hope we can live with what we see. Remember the first part of consistency is *con* and who are we *conning*? Considering the state of our fisheries we should be allowing our fisherman the flexibility to survive as viable businessmen while at the same time preserving the sustainability of the fisheries and as such I can not support the amendment at this time.



**ATLANTIC OFFSHORE LOBSTERMEN'S ASSOCIATION**  
221 Third Street P.O. Box 3001 Newport, RI 02840 (401) 815-5222 FAX (401) 847-9966

RECEIVED  
JUL 31 1998  
MANAGEMENT COUNCIL

July 28, 1998

Mr. Paul Howard, Executive Director  
New England Fishery Management Council  
5 Broadway, Route 1 South  
Saugus, MA 01906-1036

Post  Fax Note  Date 7/31/98 # of PAGES 1  
To Paul Howard  
Fax (617) 525-8937  
Bonnie Spinazzola  
Phone (603) 483-3030

Dear Mr. Howard:

On behalf of the Atlantic Offshore Lobstermen's Association (AOLA), I would like to offer the following comments with regard to the Council's proposed measures on "changing or eliminating vessel replacement and upgrade restrictions on vessels less than 30 feet".

AOLA supports inclusion of vessel replacement and upgrade restrictions for the American Lobster Commercial Fishery. In an effort to minimize complexity associated with the sale and transfer of a vessel, while understanding the need for consistency throughout the industry, we feel inclusion of these restrictions are essential tools which must be utilized.

As you may be aware, AOLA has proposed a Lobster Management Plan to reduce effort in the offshore area. One of the proposals within our plan is a moratorium on vessel upgrades for a period of two years, limiting increase in length to 10% and increase in horsepower to 20%. AOLA has worked diligently to craft a plan that will preserve the resource for future generations. Without upgrade and replacement limits within the offshore area, much of that work is for naught, as there will be no ability to limit current or future expansion of effort. It is our opinion, however, that safety concerns will be met by allowing upgrades or replacements of those proposed for length and horsepower.

At a time when complexity among fishery management plans is at an all time high and consistency is at an all time low, we feel that our proposal, which addresses both concerns, as well, as reduction of effort should not be ignored. Thank you for your attention to this important matter.

Sincerely,

Bonnie Spinazzola  
Executive Director



# City of Gloucester Fisheries Commission

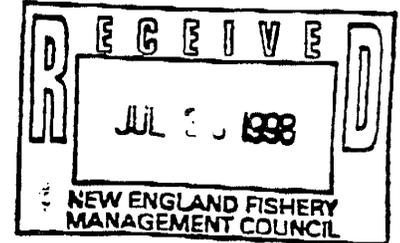
CITY HALL • GLOUCESTER • MASSACHUSETTS • 01930

July 30, 1998

## MEMBER REPRESENTATION

- Mayor
- City Council
- Cape Ann Chamber  
of Commerce
- Cape Ann Vessels  
Association
- Fisherman's Wives Association
- Fisherman's Wharf Association
- Fish Pier Advisory Board
- Gloucester Fisheries Association
- Food Workers Union
- Four Members At-Large

Paul Howard, Executive Director  
 New England Fishery Management Council  
 5 Broadway, Route 1 South  
 Saugus, Massachusetts 01906



Dear Mr. Howard,

The Gloucester Fisheries Commission approves of vessel up grade simplicity because of the mass confusion and inefficient regulations that are now in place. The preferred option that we feel would be helpful is to allow a single set of regulations for all to live by, and simplification of upgrades and transferables (KISS). Simplification and transferables are now needed in the vessel up grade and transferability of permits. Permits should be able to move from one to another.

The allowing of vessel up grades and permitting would in some cases be of major concern for safety of personnel in reference to older and unseaworthy conditions of fishing vessels.

The Gloucester Fisheries Commission do<sup>3</sup> support the management objectives found on page 10 of the public hearing document on up grade of vessels in Section 2.4, Management Objectives one through four.

We support alternative 2 preferably found on page 11 referenced as 3.2. The Gloucester Fisheries Commission are pleased to see the social / cultural impacts found on page 20 of the public hearing document referenced as 4.2.26 as have a positive social and cultural impact.

We also support the preferred alternative in the simplification of the less restrictive method of permit transfers, vessel replacement and vessel up grades.

In many of our ports the vessels today are smaller and fewer. The preferred alternative seems for the most part in good faith with all concerned. We as the Fisheries Commission of Gloucester, Massachusetts alert you, the councils to be aware that some day, in the not to distant future, we will need to increase vessel size and horse power with the same ease as the preferred to curtail or dangerous situation to our small vessels trying to reach abundant stock in for off fishing grounds.

Sincerely,  
*Vito J. Calomo*  
 Vito J. Calomo,  
 Executive Director,  
 Gloucester Fisheries Commission

Harry L. Doemts  
8 Saunders Dr.  
Poquoson, Va. 23662  
757-868-8559  
7/31/98

→ Mr. C. M. Moore, Ph.D.  
Acting Exec. Dir. - M-A FMC  
300 S. New St.  
Dover, De 19904

Subj: Comments relating to proposed FMP Amendments regarding permit transfers and vessel replacement or upgrades.

My history: I hold a Black Sea Bass Permit. I also have (and use) South Atlantic Snapper-Grouper, King and Spanish Mackerel and Shark Permits. I fish extensively with hook and line and sometimes with pots from a 24 foot vessel. I feel that I am highly qualified to comment on small, meaning less than 30 feet, fishing vessel 'effort' in that I have commercially fished from such vessels in the Gulf of Mexico or the Atlantic Ocean more than 3,000 trips.

The Black Sea Bass FMP has failed to publish limit 'effort' provisions for gear and now there is a proposal to exempt vessels less than 30 feet from replacement restrictions. By no limit 'effort' provisions I mean that a permittee (i.e. potter) who owned or fished only a few pots during the qualifying period is not restricted to a nearly similar number and is free to buy and fish hundreds of pots today. Sadly, for juvenile sea bass, there are several vessels in the Virginia Beach area in this category. Now there is a proposal to permit someone with a much less than 30 foot vessel to upgrade to a 30 foot vessel. What next?

#### VESSEL UPGRADES AND REPLACEMENTS:

There is absolutely no comparison between the amount of 'effort' that can be applied from a vessel 26 feet or less and that which can be applied from a 30 footer i.e.:

1. A vessel 26 feet or less will usually be used only on day trips whereas a 30 footer can easily make two or even three day trips comfortably (weather permitting).
2. A vessel 26 feet or less will usually have berthing facilities for no more than two anglers and usually no galley whereas a 30 footer can have berthing for up to four anglers and a galley.
3. A vessel 26 feet or less will usually efficiently fish two anglers on a commercial trip whereas a 30 footer can easily fish four anglers.
4. A vessel 26 feet or less will usually limit starting trips to days when seas are 5 feet or less whereas a 30 footer will (or can) start trips and fish in higher seas.
5. The fish box or fish hold capacity of a vessel 26 feet or less is usually considerably less than 1,000 pounds whereas the fish box or fish hold capacity of a 30 footer is much greater and can be 2,000 pounds or more.

The replacement or upgrade provisions for vessels less than 30 feet in length should be restricted to not exceed the LOA of the permitted vessel by more than 10% - to be increased

to the next full foot i.e. a 24 foot vessel can be upgraded to or replaced by a vessel 27 feet or less.

The GRT, NT, beam and horsepower replacement or upgrade restrictions should not apply to vessels of less than 30 feet in length; or, for that matter, to vessels of less than 50 feet in length. This has little bearing on the amount of 'effort' than can be exerted by these vessels.

Here's what you run into when trying to consider horsepower on smaller vessels: In 1991 a 350 cubic inch Chevy engine with a four barrel carburetor was rated at 220 HP or less. A 1998 350 cubic inch Chevy engine with the same carburetor is rated at 300 HP or more. That is more than the 20% figure. That is the very same engine just fine tuned and rated differently... Also, in smaller vessels powered by two cycle outboard engines, horsepower cannot be compared on a one to one basis with a vessel powered by a four cycle inboard or I/O engine. A 200 HP two cycle outboard engine fires (gets power) twice as often as a 200 HP four cycle engine fires (gets power). Power wise, even though they are both rated at 200 HP, you are comparing oranges and apples. The outboard engine will push an identical small vessel at least 1/3 faster than an inboard or I/O engine of identical horsepower.

In smaller vessels an increase in horsepower can unquestionably mean an increase in top and/or cruising speeds; however, in reality sea conditions generally govern cruising speed. In my 24 foot vessel I can easily cruise at 24 knots yet I do this less than one-third of the time because of sea conditions. In vessels less than 26 feet sea conditions govern cruising speed on twice as many or more days than available horsepower governs.

I feel the only place horsepower is a governing factor in controlling 'effort' is in vessels that pull (drag) nets. Increasing horsepower more than 20% in one of those vessels could result in a substantial increase in speed when dragging and therefore a substantial increase in 'effort'.

Restricting vessel size and horsepower is one of the only 'effort' controls published in the Sea Bass FMP. Don't lose sight of it. Some people are of the opinion the trip limits and seasonal quotas will govern. Those restrictions were established from 'fishing history' landings by the vessels we were operating in the qualifying period (and today). If you permit a chosen few to increase the size of their vessels by more than 10% you are giving them the opportunity to greatly increase their 'effort' and thereby increase the chance of reaching the quarterly quota faster i.e. close the season and put us temporarily out of business. Don't do it.

#### PROPOSED OTHER REVISED PROVISIONS:

I support all the other proposed revised provisions and emphasize: There should be absolutely no splitting of permits allowed.

Making the vessel replacement and transfer provisions of all the PLANS uniform is certainly a step in the right direction.

Very truly yours,

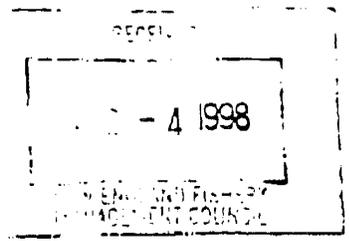


Harry Doornik

# ATACOSPA



## AQUACULTURE



Paul Howard, Executive Director *Cape Cod Little Neck*  
New England Fishery Management Council  
5 Broadway  
Saugus, MA 01906 - 1036

August 2, 1998

Dear Mr. Howard,

I met you at our Cape Cod Commercial Hook Fishermen's Association meeting in Chatham in February. I want you to know I appreciate your coming down to meet with us.

I am writing to give comment to the proposed changing or eliminating upgrade restrictions for small vessels.

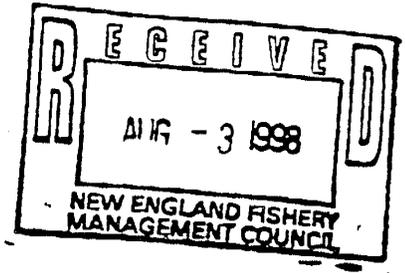
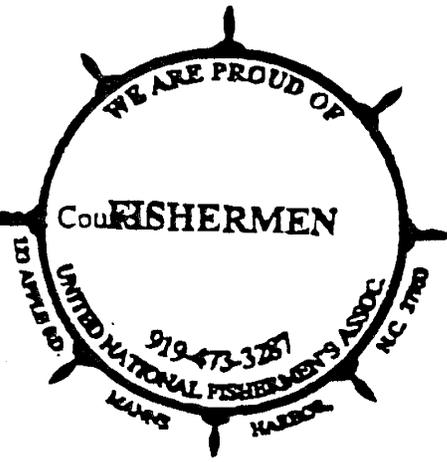
I would like to see an elimination to the length, tonnage and horsepower restrictions as applied to upgrades to an upper limit because of safety reasons.

1. A 30' boat with a 140 HP diesel could only repower up to 168 hp limiting the speed at which a vessel returns to port in a storm.
2. A 25' boat can only be upgraded to a 27.5' boat. ( @ 10 % ) Most boat builders start their lines at 28 feet.
3. A vessel under 25 ' is state registered with very differing tonnage measurements. An upgrade of these vessels is still a small, small boat, limited to inshore fisheries. Tonnage restrictions are confusing at best and unnecessary.
4. Most all of these restrictions to the under 30 foot class of boats severely constrain the existing permit holders from upgrading to a safer boat yet do little to restrict fishing effort as the weather already restricts these vessels effectively.

Thank you,

Bruce Peters - Multispecies permit # 130586

Mr. Paul Howard  
Director  
Vessel up Grade  
New England Fishery Management Council  
5 Broadway Route one South  
Saugus MA. 01906-1036



Dear Sir,

The cover sheet leads one to believe that this is just for vessels less than 30 ft. yet the document is for all vessels and Consistency on upgrades and vessels replacement in all permitted fisheries.

Councils could manage by trip limits and net size in all management plans and the fishing platforms would not matter as to size or horse power. These regulations are not needed! council needs consistency in the way they manage fisheries so the platforms do not matter! (this is additional burden on the fishing industry trying to comply with vessel upgrade requirements.) Vessel less 50 ft account for 3341 of the total 4388 vessels, these same vessels hold 6540 permits of the 1376 total permits: Council has written plans on permit numbers and not vessel sizes this has lead to many of the perceived problems. Scallops as an example 7 full time vessels are less than 50 ft. 264 of the vessels are 50 to 100 ft all have dredge size, ring size, days at sea, and crew limitation what difference does HP and size make?

Specifics in the plan:

- 1 Replacement engines of the same size blocks have more horse power due to industrial modifications: so in the future you cannot buy a engine with as little as 10% HP increase.
  - 2 Buying used vessels most fishermen cannot find a replacement vessel that meets both criterion.
  - 3 As written if an up grade was accomplished and the vessel then sunk it could not be replaced
  - 4. Numbers used in table 2 page 33 are mis leading Summer flounder (561 of the 1321 permits are for vessels less than 50 ft how many of these vessels are charter vessels? Will the same regulations be applied to head boat permits?
  - 5 Horse Power and Length evolved as management restraints in early plans now they should be rejected replaced by net size and trip limit that reflect the different harvesting capacity of the vessels pre management.
- Statement Page 1 (2.1) "due to both increasing number of vessels and increasing technology Sophistication of individual vessels." is mis leading many of those vessels are less than 50 ft. Documentation of this statement is not supplied.  
Council should reject Management based on vessel hp and length!

Sincerely  
*James Fletcher*  
James Fletcher, director  
8/3/98

APPENDIX 3

NMFS RESPONSE TO COMMENTS

Comment 1 - Several comments were received both in support of and in opposition to the Addendum which proposed an exemption from upgrade and replacement requirements for vessels less than thirty feet.

Response - The proposed exemption from upgrade and replacement requirements for vessels less than thirty feet was included as an addendum to the Public Hearing Document after the New England Fishery Management Council (NEFMC) proposed the measure at their June 24, 1998 meeting. NMFS received comments supporting and opposing the measure. The Mid-Atlantic Fishery Management Council did not support the measure in their final approval of the amendments. The New England Council was unable to reach a consensus regarding the measure, so the NEFMC voted to approve the remaining measures with an intent to reexamine the exemption for small vessels at a later date.

Comment 2 - Current vessel upgrade and replacement restrictions are already too restrictive and unnecessary because fishing effort is restricted by trip limits and gear restrictions. Also, vessel upgrades improve safety, so the Councils should reject fishery management restrictions based upon vessel horsepower and length.

Response - These amendments propose only to achieve a level of consistency among existing upgrade and replacement restrictions. Therefore, the elimination of these restrictions was not considered. The impacts of such a measure would best be considered within the context of each individual FMP, and not within a multiplan amendment such as this one. Nevertheless, many of the measures within this multiplan amendment allow for more flexibility in size increases when replacing vessels.

Comment 3 - Restrictions on upgrading existing vessels under Mid-Atlantic FMPs, which are proposed by these amendments, will hamper fishermen who wish to enter the pelagic fisheries which require larger vessels such as herring and mackerel.

Response - The current situation whereby existing vessels in some fisheries (scup, squid, butterfish, summer flounder, mahogany quahog and black sea bass) may be upgraded without limit, but cannot be replaced by a larger vessel is an anomaly. A limitation on fishing effort is an important reason that moratoriums were imposed in these fisheries, and it is less effective without a limit on upgrades. FMPs in development for herring could address upgrades and replacements, but for vessels with multiple permits the more restrictive requirements currently apply.

Comment 4 - The American lobster FMP should have upgrade and replacement restrictions for offshore vessels.

Response - These amendments propose to achieve consistency on upgrade and replacement provisions for those FMPs which currently contain some restriction. It does not address upgrade and replacement restrictions on American lobster limited access permits because they do not currently exist within the FMP. This issue could be addressed in the development of the American lobster FMP.