

Northeast Regional Proposal for a Vessel Baseline Simplification Amendment  
Mid-Atlantic Fishery Management Council Meeting  
Wilmington, DE  
August 13-15, 2013

## **Summary**

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

## **Background**

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

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

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

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

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

## **Proposed Action**

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

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

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

2. To remove the one-time upgrade restriction:

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

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

## **Other Alternatives**

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

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

### **Proposed Process and Timeline**

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

### **Questions for the Council to Consider**

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

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

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

## Abstract

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

## Background

### *Limited Access Fisheries*

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

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

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

#### *Development of the 1999 Consistency Amendment*

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

The 1999 Consistency Amendment was implemented for the following FMPs:

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

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

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

### *Limiting fishing effort through upgrade restrictions*

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

### *Current vessel upgrade and replacement restrictions*

Since the implementation of the Consistency Amendment, vessel upgrade and replacement restrictions have been implemented in other limited access fisheries, such as monkfish and Atlantic herring. They are also likely to be implemented in the upcoming approved limited access mackerel program. In 2011, there are currently 743 vessels with one limited access permits and 1359 vessels with multiple limited access permits that are affected by the baseline requirements. The limited access mackerel program is expected to add another 400 vessels that will be subject to the same requirements, plus an additional hold certification baseline<sup>1</sup>.

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

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

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

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

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

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

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

### **Industry Costs and Burden of Vessel Upgrade Restrictions**

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

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

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

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

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

### **Implementation burden of vessel upgrade restrictions**

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

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

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

### **Alternatives to control fishing effort and harvest capacity**

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

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

### *Trip Limits as an Effort Control*

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

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

### *Days-at-Sea (DAS)*

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

### *Gear Restrictions*

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

### *Ownership Caps*

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

### *Catch Share Fisheries*

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

### *Additional Effort Controls*

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

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

### **Simplifying Vessel Baseline, Upgrade, and Replacement Restrictions**

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

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

### **Options to Simplify Vessel Baseline, Upgrade, and Replacement Restrictions**

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

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

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

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

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

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

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

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

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

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

Pros: Allows more flexibility to industry.

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

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

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

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

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

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

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

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

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

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

### **Conclusions and Recommendations:**

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

#### Recommendations of the Baseline Working Group:

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

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

#### Members of the Baseline Working Group

Douglas Potts -*NMFS Northeast Regional Office*

Lindsey Feldman- *NMFS Northeast Regional Office*

Brett Alger- *NMFS Northeast Regional Office*

Ted Hawes- *NMFS Northeast Regional Office*

Anna Macan- *NMFS Northeast Regional Office*

Deirdre Boelke-*New England Fishery Management Council*

Richard Seagraves-*Mid-Atlantic Fishery Management Council*

Robert Beal-*Atlantic States Marine Fisheries Commission*

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

**Table 1. Limited Access Fisheries and Implementation Dates**

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

\*All categories except for Multispecies Handgear A Category

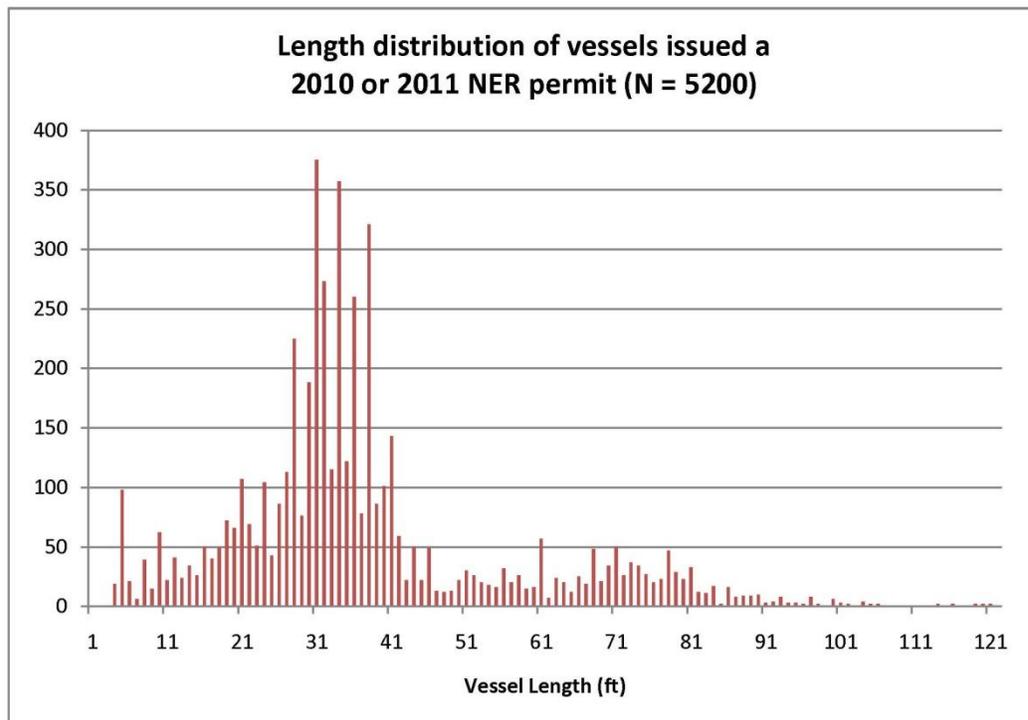
\*\*Excluding Limited Access General Category Scallop permit categories

**Table 2. Effort controls in Northeast fisheries**

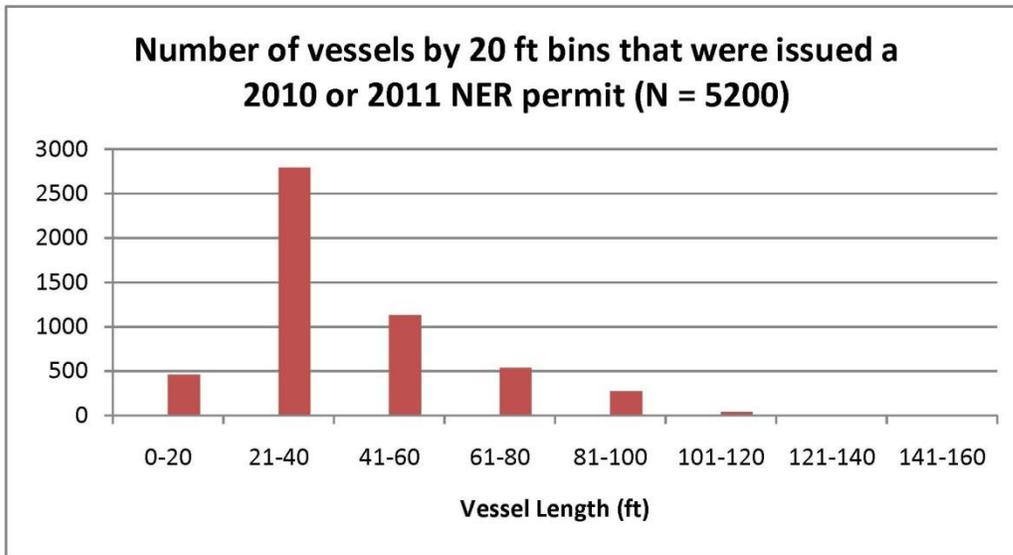
Fishery	Trip Limits	DAS	Size Cap	Permit Categories Differentiated by Size	IFQ/PSC allocation	Ownership Cap	Trap Limits
Monkfish	Yes	Yes	No	No	No	No	
Red Crab	No	No	No	No	No	No	Yes
Surf Clam/Quahog	No	No	No	No	Yes	No-Am 15	No
Multispecies-Sector	No	No	No	Yes - Small Vessel Category	Yes	No-Am 18	n/a
Multispecies-Common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

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

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



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





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

OCT - 6 2011

Dear Permit Holder:

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

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

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

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

Sincerely,

Patricia A. Kurkul  
Regional Administrator

Attachment



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

**C. Conclusion**

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

**D. Paperwork Reduction Act**

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

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

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

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

**List of Subjects in 48 CFR Part 9903**

Cost accounting standards,  
 Government procurement.

**Daniel I. Gordon,**

*Chair, Cost Accounting Standards Board.*

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

**PART 9903—CONTRACT COVERAGE**

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

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

**SUBPART 9903.2—CAS PROGRAM REQUIREMENTS**

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

**9903.201–1 CAS applicability.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

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

**BILLING CODE P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 110907562–1598–01]

**RIN 0648–BB40**

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

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

**ACTION:** Advance notice of proposed rulemaking.

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

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

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

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

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

- *Fax:* (978) 281–9135.

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

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

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

**SUPPLEMENTARY INFORMATION:**

**Background**

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

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

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

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

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

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

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

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

to current regulation can be implemented.

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

1. *Eliminate tonnages from vessel baseline regulations.* The tonnages are often considered the most malleable of baseline specifications. The gross registered tonnage can vary significantly depending on whether exact measurements or the simplified calculation method is used. Similarly, net tonnage can be calculated based either on the gross tonnage or from measurements of the vessel, and may be changed by modifying internal bulkheads. Tonnage has also been a concern for owners of vessels built outside of the United States that are determined to be under 5 net tons (14.16 m<sup>3</sup>) for import purposes.

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

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

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

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

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

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

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

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

Dated: September 30, 2011.

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

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

**BILLING CODE 3510-22-P**

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

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

### **Workgroup Suggestions**

The ANPR included 5 potential scenarios to spark discussion:

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

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

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

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

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

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

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

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

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

### **Public Suggestions**

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

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

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