

which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website: <http://www.st.nmfs.gov/st4/nop/>.

(2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to

any further deployments of that observer.

(3) *Observer requirements.* All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS website specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalent) cardiopulmonary resuscitation/first aid certification.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the website at: <http://www.nefsc.noaa.gov/femad/fsb/>.

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraphs (i)(1) through (3) of this section, NMFS shall issue a written decision to the observer containing the decertification and to the approved observer service provider via certified mail at their most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of the Department of Commerce.

4. In § 648.51, paragraphs (c)(4) and (e)(3)(iii) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(c) * * *

(4) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

(e) * * *

(3) * * *

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

5. In § 648.55, paragraph (e)(31) is revised, and paragraph (e)(32) is added to read as follows:

§ 648.55 Framework adjustments to management measures.

* * * * *

(e) * * *

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations.

(32) Any other management measures currently included in the FMP.

* * * * *

6. In § 648.60, paragraph (a)(2) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4) and vessel notification requirements specified in § 648.11(g) for observer deployment.

* * * * *

[FR Doc. E7-6489 Filed 4-5-07; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648

[Docket No. 070322066-7066-01; I.D. 031307C]

RIN 0648-AU51

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Fisheries; Regulatory Amendment to Reconcile State and Federal Commercial Fishing Vessel Permit Programs

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify the permitting and vessel replacement provisions for Federal limited access permit programs of the Northeastern United States, excluding American lobster. This action is intended to prevent fishing effort beyond what is accounted for in the FMPs for each fishery and to reinforce efforts undertaken by state fishery management agencies at targeting regulations specifically for vessels that participate wholly in state water fisheries. These measures are necessary

to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by May 7, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

- E-mail: NERO.Permit@NOAA.gov.

Include in the subject line the following: Comments on the Proposed Rule for Permit Program Reconciliation.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on the Proposed Rule for Permit Program Reconciliation."

- Fax: (978) 281-9135.

Copies of this regulatory amendment, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. A summary of the IRFA is provided in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT:

Brian Hooker, Fishery Policy Analyst, phone: (978) 281-9220, fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

State and Federal fishery management plans may differ in reporting requirements, participation restrictions, and overall strategies to control fishing mortality. These programs may be successful in achieving their objectives only when a vessel fishes in one program, either state or Federal, for an entire permit year because the management measures are typically based on analyses of fishing effort, and where that effort is expected to take place. Federal regulations are rarely the exclusive authority governing federally permitted commercial fishing vessels. Vessels that have both Federal and state permits are bound by the more restrictive of the regulations in effect. In contrast, vessels without a valid Federal permit can be permitted by a state to fish exclusively in state territorial waters, and such vessels do not have to comply with Federal fishing regulations.

Current regulations require that federally permitted fishing vessels must abide by Federal fishing regulations, regardless of whether the vessel is fishing in state or Federal waters. However, vessels that delay getting their Federal permit may be authorized to participate exclusively in state water fisheries under state rules and regulations. Although splitting fishing effort between state and Federal waters may have repercussions across all federally managed fisheries, the impact of vessels splitting fishing effort between state and Federal programs is thought to be greatest in Federal fisheries utilizing a fishing effort control program referred to as a days-at-sea (DAS) program, which is common in Federal fisheries management in New England. This type of program limits the amount of days that a federally permitted commercial fishing vessel can fish each year. Under current Federal regulations, a DAS vessel could increase its overall effort by fishing in state waters outside of the DAS program prior to renewal of its Federal DAS permit. However, state regulations could prohibit this practice, as in the case of the Massachusetts groundfish fishery. Although it is estimated that less than 10 percent of federally permitted vessels currently exploit this "loophole," there is concern that this practice could expand, especially should further reductions in DAS be necessary. Thus, the purpose of this action is to remove an unintended consequence of having a Federal permit renewal system that effectively allows for a temporary relinquishment of a Federal limited access permit.

This action would apply only to Federal limited access and moratorium commercial fishing vessel permit holders. The terms (limited access) and (moratorium) in regards to Federal permit programs are synonymous. A limited access permit is a permit that an individual has applied for and received based on qualification criteria set forth in the FMP. By applying for and receiving a limited access permit, a vessel owner has agreed to abide by a fishing program that, in turn, grants exclusive fishing privileges. Under current regulations, a Federal limited access permit must be renewed on an annual basis. If the permit is not issued within 1 year of the last day of the permit year for which it was valid, the permit is cancelled and rendered ineligible for renewal. In general, limited access permits were developed in order to control fishing effort in various fisheries that are, or were, being harvested at rates above the maximum

sustainable yield for the fishery. These limited access permits often have privileges, such as higher trip limits, or exclusive access to a particular fishery. As a result, these permits are considered valuable. Open access permits, on the other hand, can be applied for with minimum qualification criteria, and received on an annual basis without any deadlines. A vessel owner may elect to not apply for an open access permit in one year, and still be eligible to receive the permit again 2 years later. Open access permits often do not carry the same exclusive fishing privileges associated with limited access permits and thus do not carry the same value.

In order to maintain current ownership and vessel information, NMFS requires that vessel owners submit documentation on an annual basis prior to receiving the applicable limited access permit(s) for the permit year in question. This annual "renewal" or "reissuance" also serves as a way to ensure compliance with vessel reporting requirements for fishing trips taken during the year prior, since the new permit is not issued until these reports are received by NMFS. One aspect of a limited access permit is eligibility. Eligibility is the permit privilege a vessel owner maintains to renew annually his/her vessel(s) limited access permit. Currently, eligibility to renew a limited access permit remains in place for up to 11 months after the start of the new permit year. Until such time that the vessel renews its limited access permit, its Federal fishing privileges are suspended. It was never the intention of the current regulations to allow a vessel to participate wholly in a state fishing program in which it would not otherwise be allowed to participate under the conditions of the Federal permit program for which it is eligible, while the vessel(s) Federal permits are suspended. Often this exclusive state waters activity is not reported directly to NMFS, whereas, under the conditions of the Federal limited access permit, such reporting would be required.

Proposed Measures

This proposed action intends to remedy the situation described in the preceding paragraphs by making it a condition upon issuance of a limited access permit that the permit holder agrees that the vessel may not fish for or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent fishing year, or the permit either has been voluntarily relinquished or otherwise forfeited, revoked, or transferred from the vessel. This

condition of the limited access permit would be in effect for the entire duration of the permit's renewal eligibility period. For example, if an issued permit expired on April 30, 2006, a vessel owner would have until April 30, 2007, to be reissued the permit. Thus, the vessel owner would be subject to the permit condition through April 30, 2007. By participating in a Federal limited access fishing program, a vessel owner is agreeing to participate wholly in that program and be subject to all of its accompanying regulations until such time that the vessel owner is no longer eligible to renew his/her vessel(s) limited access permit. Thus, the only aspect of the permit that is suspended until the permit renewal application has been processed is its fishing privilege, whether or not such activity occurs in state or Federal waters. This measure would impact the Federal limited access commercial fishing vessel permits issued by the NMFS Northeast Regional Office that are listed in Table 1. The second measure proposed under this action would limit the number of vessel replacements allowed during a permit year. This measure would also be applicable to all limited access vessels listed in Table 1. These measures are discussed separately below.

TABLE 1. LIST OF NORTHEAST REGION LIMITED ACCESS PERMIT CATEGORIES AFFECTED BY PROPOSED RULE

FISHERY	LIMITED ACCESS PERMIT CATEGORIES
Atlantic Sea Scallop	2, 3, 4, 5, 6, 7, 8, 9.
NE Multispecies	A, C, D, E, F, HA.
Monkfish	A, B, C, D, F, G, H.
Maine Ocean Quahog	7.
Summer Flounder	1.
Scup	1.
Black Sea Bass	1.
Squid, Mackerel, Butterfish	1, 5.
Golden Tilefish	A, B, C.
Atlantic Deep-Sea Red Crab	B, C.

Limited Access Permit Fishing Prohibition After Expiration and Prior to Renewal

Under this proposed action, a commercial fishing vessel that was issued, or is in possession of, a valid Federal limited access fishing permit at the end of the permit year immediately preceding the current permit year, would be prohibited from landing any fish managed under 50 CFR part 648 for which the vessel would be authorized under the conditions of the

limited access permit(s), unless at least one of the following conditions is met:

- The vessel owner has renewed the Federal limited access permit(s) for the current permit year;
- The vessel owner has voluntarily permanently relinquished the vessel(s) Federal limited access permit(s); or
- The vessel has been replaced by another vessel and the permit eligibility has moved to the new vessel or was placed into Confirmation of Permit History (CPH).

In other words, a vessel owner who is eligible to renew his/her vessel(s) Federal limited access permit would be prohibited from fishing for and/or possessing any fish for which the vessel would be authorized under the respective limited access permit, from any waters, unless the limited access permit(s) has been renewed or removed from the vessel. All vessel reporting requirements for the limited access permits the vessel is eligible to renew would remain in effect unless the limited access permit(s) have been relinquished or transferred to another vessel or CPH. This would include completed fishing vessel trip reports (VTRs) for the entire period that the vessel was issued or eligible to be issued a limited access permit.

Under this action, a Federal limited access permitted vessel would be prohibited from obtaining a Federal open access fishing permit until such time that the limited access permits have been renewed, relinquished, or transferred. Federal open access and limited access permits may be renewed and applied for at the same time.

This action would thus commit a limited access vessel to a specific fishery program (state or Federal) prior to engaging in any fishing activities. This measure would eliminate a loophole in the regulations currently exploited by a minority of vessel owners and/or operators and would potentially prevent more vessel owners and/or operators from taking advantage of this situation in the future.

One-Time Vessel Replacement Per Permit Year

This action would allow only one transfer of limited access permits per permit year, unless the vessel being replaced has been rendered inoperable and not repairable, due to unforeseen circumstances. The intent of this measure is to deter vessel owners from moving limited access permits off their primary vessel prior to the start of a permit year and then moving them back onto their primary vessel after the primary vessel has fished part of the permit year in a state waters fishery

program. Under this scenario, a vessel owner would not be able to move the permits back onto the secondary vessel prior to the start of the following permit year. It was not foreseen that the flexibility in replacing a fishing vessel granted via the current regulation would be abused in order to circumvent fishing regulations. The current vessel replacement measures were implemented in order to rectify previous vessel replacement measures, which could potentially have compromised vessel safety by diminishing a vessel owner's flexibility to purchase and replace a vessel in a timely manner. The proposed regulations would maintain this flexibility while ensuring that the vessel replacement program is not utilized to avoid Federal regulations for a period of time.

Classification

At this time, NMFS has not determined that this proposed rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 603, an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule is found in the preamble to this proposed rule and is not repeated here. There are no Federal rules that may duplicate, overlap, or conflict with this proposed rule. The proposed action would modify the requirements for vessels issued or eligible to be issued certain Federal limited access commercial fishing vessel permits in the Northeast Region. Current regulations allow the development of such measures, provided they are consistent with the FMP objectives.

The proposed alternative to modify the limited access permit regulations was compared to the No Action alternative and an alternative that would issue a (reserve permit) in the event a permit renewal application was not received by a set deadline. The No Action alternative would result in the continuation of the current management measures.

Description and Estimate of the Number of Small Entities to which this Proposed Rule would Apply

Approximately 3,700 vessels could be affected by this action. In all, these participants generate close to \$ 1 billion annually from the sale of fish and shellfish. The Small Business Administration (SBA) size standard for small commercial fishing entities is \$ 4.0 million in gross receipts and would apply to all limited access permit holders affected by this action. Therefore, this proposed rule would not have a differential impact between small and large entities.

Data compiled by NMFS from the 2004 fishing year (FY) indicate that 64 vessels delayed their permit renewal and made landings during the time the Federal permit was invalid. In the same year eight vessels were replaced that reported landings later in the same fishing year. Thus, this rule would potentially impact 72 vessels out of the over 3,700 limited access vessels in the NE Region. An average of 94 percent of vessel owners here renewed their permits by May 1 over the last few years. With this level of compliance, only about 370 entities, including the aforementioned vessels that reported landings during this time period, would likely be affected by the permit renewal portion of this action.

Federal permit data compiled by the NMFS NE Regional Office indicate that 64 vessels delayed the renewal of their Federal limited access permits in 2004 and also had landings both with and without their Federal permit. In the NE multispecies fishery, where the practice is most acute, between 2002 and 2005 only nine vessels repeatedly delayed the renewal of their Federal limited access NE multispecies permit. In addition to vessels delaying their permit renewal, some vessels are replaced by another fishing vessel during the fishing year. The former vessel may then continue to fish outside of Federal regulations in state waters. Across all limited access fisheries, about eight vessels per year land fish as a result of replacing a vessel and then continuing to fish with the old vessel in 2004.

Economic Impacts of this Proposed Action

Analyses of data showed that only a small number of vessels currently exploit the loophole the proposed action would fix. This action would affect all limited access fisheries in the NE Region. However, a fishery of particular concern due to significant state water and Federal water components, is the fishery that catches Gulf of Maine and

Georges Bank cod stocks in the NE multispecies fishery. Thus, for the purposes of this economic analysis, the impact to the vessel owners active in the limited access multispecies fishery is considered the upper bound of economic impacts to all the affected fisheries. In 2004, an average of 7,855 lb (3,563 kg) (86,409 lb (39,194 kg) total) of cod was landed by 11 fishing vessels (approximately 4,000 NE multispecies limited access permits were issued in FY 2004) fishing exclusively under state fishing regulations by vessels that were eligible for a limited access permit in the previous permit year. At an ex-vessel price of \$2.50 per pound for cod, this action could conceivably reduce annual revenues of a given vessel owner by \$36,000. However, there is no indication from this analysis that these same fish would not have been caught by state-permitted vessels that are not eligible for a limited access permit, nor that this same quantity of fish would not have been caught by a federally permitted limited access commercial fishing vessel. The total ex-vessel value of cod landed in 2004 was \$21,690,850. Thus, this action could cause a slightly negative economic impact of less than 1 percent to the commercial groundfish industry. In 2004, other DAS fisheries such as monkfish and sea scallop had average landings per limited access eligible vessel of 5,852 lb (2,654 kg) whole weight (N= 21), and 3,270 lb (1,483 kg) (N=9) landed weight, respectively. For a monkfish vessel, this would result in a decrease in revenue of approximately \$8,193 (using an average monkfish ex-vessel price of \$1.40 per lb whole weight). This would result in a decrease in revenue for a given scallop vessel of approximately \$23,707 (using a scallop ex-vessel price of \$7.25 per lb landed weight). The total ex-vessel value of the monkfish and scallop fisheries were \$33,331,944 and \$320,696,436, respectively, in 2004. All other limited access fisheries with an inshore (state waters) stock component are managed through a hard total allowable catch (TAC). These TAC programs are managed on either a coast-wide or state-by-state basis. Federal TAC programs, for the most part, are equivalent to the state programs for each fishery. When this equivalency exists there is no advantage for a vessel owner eligible for a Federal limited access permit to delay his/her Federal permit renewal in order to fish exclusively under a state permit. However, in the absence of Federal and state equivalency in a TAC program (e.g., the closure of federally controlled waters, lower Federal possession limits, etc.)

there could be an advantage to splitting fishing effort between state and Federal fisheries in the same fishing year.

Economic Impacts of Alternatives to the Proposed Action

In addition to the proposed alternative described in the preamble, a second, non-preferred alternative, and the status quo alternative were also analyzed. The status quo alternative would leave the current regulations in place. The second, non-preferred alternative would also modify the current Federal commercial fishing vessel limited access permit renewal process; however unlike the preferred alternative, this alternative places a deadline on the limited access permit renewal for the permit year in question. Under this alternative, if the vessel owner misses the application deadline the vessel would not lose its eligibility to apply for the Federal limited access permit for the following permit year. If the vessel owner fails to submit a complete renewal application 30 days prior to the start of the permit year for which the permit is required, the vessel owner has, by default, elected to either fish exclusively in state waters, or not to fish at all. A complete application received after 30 days prior to the start of the permit year for which the permit is required would reserve that vessel owner's eligibility to apply for Federal permits the following fishing year through the issuance of a Federal "Reserve Permit." If the commercial fishing vessel does not apply for and receive either a limited access permit or a reserve permit during a permit year it would become ineligible to receive the limited access permit at any future time. The one-time per year vessel replacement provision is the same as outlined in the Agency's preferred alternative.

The second non-preferred alternative, would have the same reduction in ex-vessel value that was outlined in the section of this Classification section detailing the preferred alternative. However, this alternative would have a greater economic impact in that vessel owners would be prohibited from renewing their Federal limited access permit at any time during the permit year, if they failed to renew their permit prior to the start of the permit year. The 2004 data analyzed indicated that approximately 2 percent (65 entities) of limited access permit holders delayed the renewal of their permits. It is not feasible to identify the total landings and ex-vessel value of these landings to determine if this 2 percent contribute a greater or lesser amount to annual fishery landings than an average vessel.

The economic impacts of the non-preferred alternative are greater than those under the status quo and preferred alternatives. It is estimated that the status quo alternative would realize a small short-term positive economic impact to the fishing industry due to a slight increase in landings. It is highly probable that this increase, especially if more vessels take advantage of fishing in both state and Federal fishing programs in the same permit year, would be offset in the future by a decrease in landings due to more restrictive fishing regulations required after target fishing mortality rates are not realized.

Public Reporting Burden

This proposed rule contains collection of information requirements previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) under OMB control numbers 0648-0202 and 0648-0212. The current expiration dates for the reporting requirements under these collections are October 31, 2009, and September 30, 2008, respectively. The public(s) reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 2, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for “Permit year” is added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Permit year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year;

(2) For all other fisheries in this part, from May 1 through April 30 of the following year.

* * * * *

3. In § 648.4, paragraphs (a)(1)(i)(B), (a)(1)(i)(E), introductory text (a)(1)(i)(K), and (b) are revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(B) *Application/renewal restrictions.*

All limited access or moratorium permits established under this section must be issued on an annual basis by the last day of the permit year for which the permit is required, unless a confirmation of permit history (CPH) has been issued as specified in paragraph (a)(1)(i)(J) of this section. Application for such permits must be received no later than 30 days before the last day of the permit year. Failure to renew a limited access or moratorium permit in any permit year bars the renewal of the permit in subsequent years. If a vessel is issued more than one limited access or moratorium permit under this section, these permits will be regarded as a permit suite and must be renewed together in accordance with this paragraph (a)(1)(i)(B). Open access permits may not be issued to a vessel eligible to renew a limited access or moratorium permit until such time that the vessel(s) limited access or moratorium permit(s) are renewed, or the limited access or moratorium permit has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section, or transferred from the vessel via a replacement vessel pursuant to paragraph (a)(1)(i)(E) of this section, or confirmation of permit history pursuant to paragraph (a)(1)(i)(J) of this section.

* * * * *

(E) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(b)(6), an owner of a vessel that has been issued any limited access or moratorium permit under this section is limited to one vessel replacement per permit year, using the earliest permit year start date of the limited access or moratorium permits for which the vessel is eligible, unless the vessel has been rendered inoperable and non-repairable. To be eligible for a

limited access or moratorium permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

* * * * *

(K) *Abandonment or voluntary relinquishment of a limited access or moratorium permit.* If a vessel’s limited access or moratorium permit for a particular fishery is voluntarily relinquished to the Regional Administrator or abandoned through failure to renew or otherwise, no limited access or moratorium permit for that fishery may be reissued or renewed based on that vessel(s) limited access or moratorium permit history or to any other vessel relying on that vessel(s) limited access or moratorium permit history.

* * * * *

(b) *Permit conditions.* (1)(i) Any person who applies for and is issued or renews a fishing permit under this section agrees, as a condition of the permit, that the vessel and the vessel’s fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed); are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part, except tilefish, must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium; or a spiny dogfish or bluefish commercial vessel permit, must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A

state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coast-wide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

(ii) Any person who applies for or has been issued a limited access or

moratorium permit on or after [EFFECTIVE DATE OF FINAL RULE] agrees, as a condition of the permit, that the vessel may not fish for, catch, possess, or land, in or from Federal or state waters, any species of fish authorized by the permit, unless and until the permit has been issued or renewed in any subsequent fishing year, or the permit either has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

(2) A vessel that is issued or renewed a limited access or moratorium permit on or after [EFFECTIVE DATE OF FINAL RULE] for any fishery governed under this section is prohibited from fishing for, catching, possessing, and/or landing any fish for which the vessel would be authorized under the respective limited access or moratorium permit in or from state and/or Federal waters in any subsequent fishing year, unless and until the limited access or moratorium permit has been issued or renewed pursuant to paragraph (a)(1)(i)(B) of this section and the valid permit is on board the vessel. This prohibition does not apply to a vessel for which the limited access or moratorium permit has been voluntarily relinquished pursuant to paragraph (a)(1)(i)(K) of this section or otherwise forfeited, revoked, or transferred from the vessel.

* * * * *

4. In § 648.14, paragraph (a)(31)(ii) is revised, and paragraphs (a)(178) and (a)(179) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(31) * * *

(ii) The NE multispecies were harvested by a vessel not issued a NE multispecies permit, nor eligible to renew or be reissued a limited access NE multispecies permit as specified in § 648.4 (b)(2), that fishes for NE multispecies exclusively in state waters;

* * * * *

(178) If eligible for re-issuance or renewal of a limited access or moratorium permit:

(i) Fish for, take, catch, harvest or land any species of fish regulated by this part for which the vessel is eligible to possess under a limited access or moratorium permit until the vessel has been issued the applicable limited access or moratorium permit by NMFS.

(ii) [Reserved]

(179) Attempt to replace a limited access or moratorium fishing vessel, as specified at § 648.4 (a)(1)(i)(E), more than one time during a permit year, unless the vessel has been rendered inoperable and non-repairable.

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