

**AN ENVIRONMENTAL ASSESSMENT OF IMPACTS REGARDING ACTION
TO RECONCILE STATE COMMERCIAL FISHING PROGRAMS AND
FEDERAL LIMITED ACCESS COMMERCIAL FISHING VESSEL PERMIT
PRIVILEGES**

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1.0 EXECUTIVE SUMMARY

Commercial fishing programs often differ between the state and Federal fishery management agencies. This action would reconcile and clarify issues surrounding the period of time that a Federal limited access permit is valid for the purposes of determining when a vessel would be authorized to fish outside of a Federal limited access permit program in which it is eligible to participate. Federal limited access permits are issued on an annual basis. A federally permitted vessel must abide by the restrictions of the permit whether the vessel is fishing in state or Federal waters. In order to maintain eligibility for a limited access permit the permit needs to be renewed every year. However, the only deadline to maintain eligibility is that the limited access permit must be issued to the vessel prior to the start of the next permit year. This policy effectively allows for a temporary suspension of the regulatory requirements of the limited access permit between the expiration date of the permit (at the end of the permit year) and when the permit renewed (up to 11 months after the start of the permit year). This would not be an issue if the vessel did not fish during the period of time that the permit was suspended. However, data suggests that a small minority of vessel owners are fishing outside of the Federal regulatory program during that time in state waters. A vessel fishing part of the year exclusively under state regulations and part of the year under the Federal/state management regime creates more fishing effort, and thus greater fishing mortality, than that which was intended by the fishery management plan. This action is necessary to clarify that a Federal limited access permit program is intended to be the exclusive program (except in the case when a state's fishing regulations may be more restrictive) in which a vessel participates during a permit year.

In addition to clarifying which fishing regulations to which a vessel (either issued a limited access permit or eligible to renew a limited access fishing permit) must comply, this action would also modify the vessel replacement program. The vessel replacement program currently allows limited access permit holders to replace their federally-permitted vessel, as many times as necessary, with another vessel within certain size and horsepower restrictions (except in the American lobster fishery management plan which is not included in this action) each permit year. The vessel replacement program would be modified to allow only one vessel replacement per permit year, unless the vessel has been rendered inoperable and non-repairable. This action compliments the former action in that it closes another means by which vessel owners are fishing the same fishing vessel under two different fishing programs (for the same fishery) in the same permit year. As this document details, a minority of vessel owners replace their vessel more than one time within the same fishing year. Although it is difficult to say for certain the reason for the multiple replacements the effect is that a vessel owner could replace a vessel with a vessel that is not intended to be used for fishing in order to use the primary fishing vessel to fish exclusively in state waters. Once the primary fishing vessel has completed fishing in state waters the vessel owner could move the Federal limited access permit(s) from the non-fishing vessel to the primary vessel via a second vessel replacement. This action would allow this type of discretionary replacement one time per permit year. However, this action would not prevent a vessel owner from replacing a

federally-permitted vessel if that vessel has become inoperable and non-repairable, even if the vessel had been replaced earlier in the permit year.

Table A below summarizes the impacts of the preferred alternative on valued ecosystem components (VECs). In addition to the preferred alternative this document also analyses the impact of a non-preferred alternative and a no-action (status-quo) alternative. The analysis of the status-quo alternative assumes that the current regulatory loophole would become exploited by an increasing number of vessels over time. Section 6.0 of this document goes into greater detail of the impacts resulting from each alternative. As this action is primarily administrative in nature and expected to impact only a small minority of vessel owners (less than 400 vessels out of a universe of approximately 4,000 vessels) the impacts to the physical and biological environment, endangered or other protected species, habitat, and human communities is likely to be minimal. This action is considered to be proactive, thus existing data does not show this to currently be a large problem, but it is anticipated to be a greater problem in the future if no action is taken in the present. The preferred alternative is not likely to result in any significant cumulative impacts to the VECs (see Section 6.4 for more detail).

Table A. Qualitative summary of the expected impacts of three alternatives considered for the permit reconciliation action.

Proposed Federal Action		Valued Ecosystem Component				
Limited Access Permit Management Alternatives		Federally-Managed Fisheries	Non-target Species	Protected Species	Habitat (including EFH)	Human Communities
Alt. 1	Prohibition on fishing until permit is renewed.	Small Positive It is anticipated that this action would result in a small decrease in fishing effort and thus less mortality.	Small Positive It is anticipated that this action would result in a small decrease in fishing effort and thus less mortality.	Small Positive It is anticipated that this action would result in a small decrease in fishing effort and thus less interactions w/ protected species.	Small Positive It is anticipated that this action would result in a small decrease in fishing effort and thus less interactions w/ habitat.	Small Negative Potential short-term loss of income.
	One-time vessel replacement per permit year.					Small Negative Less flexibility in permitting of vessels and potential short-term loss of income.
Alt. 2	Application deadline for limited access permit renewal.	Small Positive It is anticipated that this action would result in a small decrease in fishing effort and thus less mortality.	Small Positive It is anticipated that this action would result in a small decrease in fishing effort and thus less mortality.	Small Positive It is anticipated that this action would result in a small decrease in fishing effort and thus less interactions w/ protected species.	Small Positive It is anticipated that this action would result in a small decrease in fishing effort and thus less interactions w/ habitat.	Negative Potential short-term loss of income.
	One-time vessel replacement per permit year.					Small Negative Less flexibility in permitting of vessels and potential short-term loss of income.
Alt. 3 (status quo)	No limited access permit renewal restrictions within one year.	Small Negative Exploitation of current regulatory loophole may result in excess fishing mortality.	Small Negative Excess fishing effort could lead to increase in non-target fishery mortality.	Small Negative Excess fishing effort could lead to increase in interactions with protected species.	Small Negative Excess fishing effort could lead to increase in interactions with habitat.	Neutral Maintain status quo revenue.
	No limit on the number of vessel replacements.					

2.0 LIST OF ACRONYMS

B	Biomass
CPUE	Catch Per Unit Effort
EA	Environmental Assessment
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
EO	Executive Order
ESA	Endangered Species Act of 1973
F	Fishing Mortality Rate
FMAT	Fishery Management Action Team
FR	Federal Register
FMP	Fishery Management Plan
HPTRP	Harbor Porpoise Take Reduction Plan
IRFA	Initial Regulatory Flexibility Analysis
LWTRP	Large Whale Take Reduction Plan
M	Natural Mortality Rate
MAFMC	Mid-Atlantic Fishery Management Council
MMPA	Marine Mammal Protection Act
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
MSY	Maximum Sustainable Yield
mt	metric tons
NAO	NOAA Administrative Order
NERO	Northeast Regional Office
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
OY	Optimal Yield
PBR	Potential Biological Removal
PRA	Paperwork Reduction Act
RIR	Regulatory Impact Review
SARC	Stock Assessment Review Committee
SAW	Stock Assessment Workshop
SMA	Small Business Administration
SSB	Spawning Stock Biomass
SFA	Sustainable Fisheries Act
VMS	Vessel Monitoring System
VTR	Vessel Trip Report

3.0 PURPOSE AND NEED FOR ACTION

Implementing regulations for state and Federal fishery management plans may differ in reporting requirements, participation restrictions, and overall strategies to control fishing mortality. These programs are often successful in achieving the fishery management plan objectives only when a vessel fishes in one program, state or Federal, for an entire permit year. Although all Federal fishing management programs could be affected by vessels fishing under different state and Federal programs for the same fishery in a given permit year, the impact of vessels splitting fishing effort between state and Federal programs has the most potential impact in fisheries in which the Federal fishing program utilizes a fishing effort control program known as days-at-sea (DAS), common in New England fishery management plans. This program limits the amount of days that a federally-permitted commercial fishing vessel can fish regardless of where it is fishing (i.e. state or Federal waters). Concern that vessels were splitting their effort between state and Federal fishing programs was initially raised regarding the Northeast (NE) multispecies fishery. It is estimated that less than 5% of vessels in the NE multispecies fishery currently exploit or exploited (see Section 5.4) what amounts to a regulatory loophole, fishing part of the permit year exclusively under state regulations and then renewing their Federal permit later in the permit year and fishing under the Federal fishing program. Although generally a small number of vessels, their impact to fishing mortality objectives could potentially be significant if these numbers increase and reductions in DAS continue. Data indicates that the number of vessels currently exploiting this loophole in other New England and Mid-Atlantic fisheries is also relatively minor.

In addition to modifying the limited access vessel permit renewal program, this action would also modify the limited access vessel replacement program. The vessel replacement program currently allows limited access permit holders to replace their federally-permitted vessel with another vessel within certain size and horsepower restrictions as many times as the vessel owner sees as necessary each permit year. The vessel replacement program would be modified to allow only one vessel replacement per permit year, unless the vessel has been rendered inoperable and non-repairable. This action complements the former action in that it closes another means by which vessel owners are fishing the same fishing vessel under two different fishing programs (for the same fishery) in the same permit year. As this document details, a minority of vessel owners replace their vessel more than one time within the same fishing year. Although it is difficult to say for certain the reason for the multiple replacements the effect is that a vessel owner could replace a vessel with a vessel that is not intended to be used for fishing in order to use the primary fishing vessel to fish exclusively in state waters. Once the primary fishing vessel has completed fishing in state waters the vessel owner could move the Federal limited access permit(s) from the non-fishing vessel to the primary vessel via a second vessel replacement. This action would limit this type of discretionary replacement to one time per permit year. However, this action would not prevent a vessel owner from replacing a federally-permitted vessel if that vessel has become inoperable and non-repairable, even if the vessel had been replaced earlier in the permit year.

It is the purpose of this action 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 for part of the permit year either through delaying the renewal of a limited access permit or by replacing a vessel more than once within a permit year. This action would reinforce commercial fishing vessel permit renewal and vessel replacement procedures currently practiced by an over-whelming majority of limited access permit holders and is needed before additional vessels begin to regard this loophole as an advantage that should be utilized to stay competitive.

3.1 BACKGROUND

The discussions contained in this document apply only to vessel owners holding Federal limited access and/or moratorium commercial fishing vessel permits managed under 50 CFR part 648. A limited access or moratorium permit is a permit that an individual has applied for and received based on qualification criteria set forth in a fishery management plan. 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. Although exclusive privileges are granted, the limited access permit holder must abide by the more restrictive rules of state and Federal fishing programs, for the fishery in which the vessel is participating. Under current regulations, a Federal limited access permit must be renewed on an annual basis. If the permit is not issued within one year of the last day of the permit year for which it was valid, the permit is cancelled and rendered ineligible for renewal. The terms “limited access” and “moratorium” in regards to permit programs are used synonymously throughout this document. In general, limited access permit programs have been 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. Federal limited access permits may also have fishing privileges associated with them, such as exclusive access to a particular fishery, or higher trip limits. As a result of these privileges these permits are considered valuable. Open access permits, on the other hand, can be applied for with minimum requirements on an annual basis without any deadlines. A vessel may elect to not apply for an open access permit in one year, and still be eligible to receive the permit again two years later. Open access permits often do not carry the same level of fishing privileges that are associated with limited access permits and thus do not carry the same value. A limited access permit has several properties such as the fishing privileges mentioned above. In order for NOAA Fisheries Service to maintain the most current ownership and vessel information on file for a particular vessel, NOAA Fisheries Service requires that vessel owners submit documentation on an annual basis prior to the start of a permit year in order for the vessel owner to receive a limited access permit valid for the following permit year. This annual “renewal” also serves as a way to help ensure compliance with vessel reporting requirements for fishing trips taken in the year prior as reports are required for each month the vessel was permitted in the prior fishing year in order to be re-issued permits in the following year.

An additional property of the limited access permit is eligibility. Eligibility is a right to renew a limited access permit. Prior to the 1999 Consistency Amendment (64 FR 8263, February 19, 1999), a limited access NE multispecies or scallop permit had to be renewed

prior to the start of the permit year. If the limited access permit was not renewed by the deadline the limited access permit eligibility became invalid. Currently eligibility to renew a limited access permit remains in place for 11 months after the start of the new permit year. Federal fishing privileges between the expiration date (e.g., April 30 for a permit year that begins May 1) and the date of renewal in the following permit year are, in effect, suspended until such time that the vessel successfully renews its Federal limited access permit(s). What wasn't intended when the current rule was established was for the suspension of the Federal privileges to be interpreted to mean that the vessel is free 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. Often this exclusive state waters activity is not reported to NOAA Fisheries Service by the vessel, which it would be required to do under the conditions of the Federal limited access permit if the permit(s) had been issued to the vessel. Both management alternatives for this proposed action would remedy this situation by making it clear that by participating in the Federal limited access fishing program, a vessel owner is agreeing to participate wholly in that program. Under the preferred alternative, the only property of the permit that is suspended until the permit renewal application has been processed is the fishing privilege. The suspension of this privilege extends to all fishing activity, regardless if it occurs in state or Federal waters, which would otherwise be regulated by the limited access permit. The limited access eligibility property, which does not lapse, would carry with it the vessel reporting requirements that are applicable for each limited access permit. Under the non-preferred alternative, failure to renew a Federal limited access permit prior to the start of the permit year would result in the suspension of that permit for the entire permit year while retaining the eligibility to renew the permit at the start of the following permit year. It should be noted that Federal regulations are rarely the exclusive authority for fishing regulations. 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 thus not have to comply with Federal fishing regulations.

Discussion of the environmental impacts in this document are often analyzed within the context of a DAS fishery such as the Northeast cod fishery. The reason for choosing cod for more in-depth analysis is because it was this fishery that initially prompted this action and is the fishery of the most concern because of the availability of this resource in both state and federally-controlled waters. An analysis of this practice across other limited access fisheries was conducted and found that less than 75 vessels in both 2004 and 2005 delayed the renewal of their limited access permits and also had landings during the time that the permit wasn't renewed. Many fisheries operate under a hard quota that is developed in coordination with the states. In these cases effort is controlled by the amount of quota available to the state, regardless if the vessel is permitted to fish in Federal or state waters. The other DAS-controlled fisheries in the NE Region are Atlantic sea scallop, monkfish, and deep-sea red crab. Of these only the monkfish and scallop fisheries had landings when a limited access permit was delayed in renewal. Monkfish landed in this way totaled 110,779 lb and 74,563 lb (live weight) in 2004 and 2005, respectively. For scallops the total meat weight (landed weight) was 22,269 lb and 8,746 lb in 2004 and 2005, respectively.

4.0 MANAGEMENT ALTERNATIVES

4.1.0 Alternative 1--PREFERRED ALTERNATIVE

This action would modify the current commercial fishing vessel fish possession regulations for vessels that were issued Federal limited access permit(s) for the preceding permit year by prohibiting the possession of federally managed species, regardless of where the vessel is fishing, until the limited access permit has been renewed, relinquished, or transferred through a vessel replacement. This action would only impact Federal limited access commercial fishing vessel permits issued from the Northeast Regional Office, with the exception of American lobster (Table 1). These include: NE Multispecies, Atlantic Sea Scallop, Monkfish, Atlantic Surfclam and Ocean Quahog, Squid and Butterfish, Summer Flounder, Scup, Black Sea Bass, Golden Tilefish, and Atlantic Deep-sea Red Crab. A vessel issued only Federal open access permit(s) would not be affected. In addition, this action would limit the number of vessel replacements to one replacement per permit year. The provisions for this action are detailed 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

4.1.1 Limited Access Commercial Fishing Vessel Permits—Renewal Application

Under this alternative a commercial fishing vessel that was issued, or in possession of, a valid Federal limited access fishing permit at the end of the permit year immediately preceding the current permit year, will be prohibited from landing any fish managed under 50 CFR Part 648 unless at least one of the following conditions are met:

- The vessel has renewed the Federal limited access or moratorium permit(s) for the current permit year;
- The vessel has voluntarily permanently relinquished its 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 placed into the Confirmation of Permit History (CPH).

In other words, a vessel that is eligible to renew a Federal limited access permit will 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. The permit year starts for each fishery as follows: March 1 for Deep-sea Red Crab and Atlantic Scallops limited access permits; May 1, for all other limited access permits. A vessel that is eligible for a limited access NE multispecies permit will be also prohibited from participating in the DAS Leasing or DAS Transfer Programs until the permit has been renewed. All vessel reporting requirements, including Fishing Vessel Trip Reports (VTRs), for the limited access permits for which the vessel is eligible to renew would remain in effect until the limited access permit(s) have been renewed, relinquished or transferred to another vessel or CPH. Please see Section 4.1.3 for more detail on this provision.

Vessel owners will continue to be prohibited from dividing limited access permits from one vessel on to two or more vessels (i.e., no permit splitting). Furthermore, a limited access vessel will be prohibited from obtaining a Federal open access fishing permit until such time that the limited access permits have been renewed, relinquished, or transferred. Open access and limited access permits may be renewed and applied for at the same time.

Rationale: This action would commit a Federal limited access vessel to a specific fishery program prior to engaging in any fishing activities. Potential increases in fishing effort could occur when a vessel fishes exclusively under state regulations and then chooses to fish under Federal regulations in the same permit year. This action would prevent this opportunity from occurring. For the NE multispecies fishery alone, this action could impact approximately 6% of Federal limited access permit holders. As shown in Figures 3 and 6 in the Affected Environment section of this document, currently 92% of NE multispecies limited access permit holders renew their permits prior to the start of the permit year, thus this action would have minimal impact on these particular vessels. Data from other limited access permit fisheries demonstrate minimal impact as well. Please refer to Section 5.4 for more detail on the impact to human communities. However, there is concern that as regulations become more restrictive vessel operators may take advantage of this loophole more frequently, especially in DAS effort-controlled fisheries. As inshore stocks rebuild, this measure is designed to be pro-active in deterring vessel owners from trying to fish under two separate sets of regulations.

4.1.2 Commercial Fishing Vessel Replacement Program

This provision would restrict the replacement of limited access permitted vessel to 1 replacement per permit year for all applicable fishery management plans administered by the NE Region (except American lobster), unless the vessel being replaced has sunk, been destroyed, or been rendered inoperable and not repairable. Documentation would

be required to be submitted to the Regional Administrator to substantiate the claim. The conditions required to replace a vessel a second time within the same permit year became established policy in 2004 in order to mitigate the combining of DAS from vessels owned by the same person onto one vessel in a given permit year. These conditions have worked effectively for that purpose. The Regional Administrator would retain the right to review each application of a second vessel replacement in a given fishing year on a case-by-case basis.

Rationale: This action would deter vessel owners from moving Federal limited access permits off a primary fishing vessel via a vessel replacement prior to the start of a permit year and then replacing the secondary 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 a secondary vessel prior to the start of the following permit year. As Figure 4 in the Affected Environment section shows this restriction will impact a minimal number of vessels.

4.1.3 Reporting Requirements

Under this measure a vessel will be required to abide by all applicable reporting regulations listed in 50 CFR Part 648.7, including the submission of VTRs, for the entire time that the vessel is in possession of a valid limited access permit, or is eligible to renew a Federal limited access fishing permit issued to it in the prior permit year. Current regulations maintain vessel reporting requirements only for such time that a permit has been issued. This measure expands the requirement to include the entire time for which the vessel is eligible to renew the permit.

Rationale: The purpose of the maintenance of the vessel reporting requirement to include the period of permit eligibility is to ensure program compliance. VTRs have always been required for periods in which no fishing activity took place. Submission of a VTR is one of the longest running vessel data collection programs. If a report is not submitted it can not be assumed that fishing did not take place during that time period. It is incumbent on the federally-permitted vessel owner to inform NOAA Fisheries Service every month what activity did or did not take place. There is a single check box labeled “Did not fish during month/year” at the top of every VTR for recording negative reports.

4.2.0 Alternative 2

Alternative 2 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. However, 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 application deadline is missed, the vessel would be, from a Federal regulatory standpoint, be eligible to participate exclusively in a state fishing program. Figure 1 details this process further.

The one-time per year vessel replacement provision is the same as outlined in the agency's preferred alternative.

4.2.1 Limited Access Commercial Fishing Vessel Permits—Renewal Application

Under this alternative, 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 fishing 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." Refer to Figure 1 for information outlining the process for a Federal limited access NE multispecies permit renewal under this alternative. Under this alternative, vessel owners would also remain prohibited from dividing limited access permits from one vessel on to two or more vessels (i.e., no permit splitting). Completed VTRs would remain required in order to receive any Federal limited access permit unless the only permit issued the vessel in the entire prior permit year was a Reserve Permit. All changes in the permitting process would be made clear on the vessel permit renewal application. A vessel issued a Reserve Permit would be excluded from participating in the DAS Leasing or DAS Transfer Programs. 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. This policy would be the same as the current "renew or lose" policy.

Rationale: This action would commit a vessel eligible for a Federal limited access permit to either fish under the Federal fishery program or fish exclusively in a state fishing program for an entire permit year. Potential fishing effort increases occur when a vessel fishes exclusively under state regulations and then chooses to fish under Federal regulations in the same fishing year. This action would prevent this from occurring. Furthermore, by having an annual application process it is anticipated that compliance with VTR submission would remain high, as it is a pre-requisite for renewing a permit. An annual application process also maintains a mechanism to help ensure that vessel owners submit their most current data to the permit office.

4.2.2 Commercial Fishing Vessel Replacement Program

This provision would restrict the replacement of limited access permitted vessels to 1 replacement per permit year, unless the vessel being replaced has sunk, been destroyed, or been rendered inoperable and not repairable. Documentation would be required to be submitted to the Regional Administrator to substantiate the claim. This provision would apply to a Federal limited access permits issued by the NOAA Fisheries Service NE Regional Office (except American lobster). The conditions required to replace a vessel a second time within the same permit year were established as policy in 2004 to mitigate the combining of DAS from vessels owned by the same person onto one vessel in a given

permit year. The Regional Administrator would retain the right to review each application of a second vessel replacement in a given fishing year on a case-by-case basis.

Rationale: This action would deter vessel owners from moving Federal limited access permits off a primary fishing vessel prior to the start of a permit year via a vessel replacement and then conduct a second vessel replacement to move the permits back onto the 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. As Figure 4 in the Affected Environment section shows this restriction will impact a minimal number of vessels.

Figure 1. Proposed commercial vessel application renewal scenario (for permit year beginning May 1).

April 30, 2005	May 1, 2005	Jun/Jul/Aug/Sep/Oct/Nov/Dec/Jan/Feb/Mar	April 30, 2006	May 1, 2006
Complete 2005 application received	Valid Federal permit issued		Complete 2006 application received	Valid Federal permit issued
Complete 2005 application NOT received		Completed 2005 application received. Vessel's permits enter 'reserve' status. Vessel remains ineligible to fish in Federal waters but retains eligibility to apply for 2006 Federal permit and will be mailed a 2006 renewal application in the Spring.	Complete 2006 application received	Valid Federal permit issued
Complete 2005 application NOT received		Complete 2005 application NOT received. Vessel owner is sent 'renew or lose' letter and permit renewal application.	Complete 2005 application STILL NOT received	Federal limited access permit eligibility lost

4.3.0 No Action/Status Quo Alternative

Under this alternative the commercial fishing permitting system that is currently in place would remain in effect. The implementing regulations can be found at 50 CFR part 648.4.

The status quo alternative would allow fishing vessels to fish in state waters after the start of a permit year prior to renewing their Federal permits. Federal fishing effort-control and reporting requirements would be effectively "suspended" until the vessel owner elects to renew its Federal permits. Fishing mortality resulting from the vessel fishing under two programs within the same fishing year could be greater than that planned for under the various Federal FMPs. Under this alternative a limited access permit not issued

by the last day of the permit year would be cancelled via the current “renew or lose” policy.

Under this status quo alternative a vessel owner is eligible to replace a fishing vessel with another fishing vessel as many times as desired by the applicant (assuming that other vessel replacement conditions are not violated (e.g., DAS stacking rules)). This alternative would continue to allow a vessel owner an unlimited opportunity to place Federal permits on a vessel that is not intended to be utilized in a fishery, while another primary vessel fishes in state waters exclusively under state regulations. While this status quo alternative is more flexible for vessel owners, fishing mortality resulting from the vessel fishing under two applicable programs within the same fishing year could be greater than that planned for under the Federal FMP.

4.4 Alternatives Considered But Rejected

4.4.1 Automatic Permit Renewal

Under this alternative, a vessel owner’s Federal permits, both limited access and open access, are automatically renewed from year to year. Should someone wish to relinquish their Federal permits, they would be required to notify NOAA Fisheries Service in order to have them cancelled. Once relinquished, the vessel would no longer be eligible to reinstate any Federal limited access permits that were discontinued. Open access permits that are dropped would not be able to be renewed until the following fishing year for that fishery.

Rejection rationale: Although this alternative would clearly remove any lapse between permit renewals, as they would be automatically renewed unless the vessel decides to forgo the permit, this method would not facilitate compliance with current data collection programs. Currently a vessel is required to submit VTRs from the previous year prior to being issued a permit. Automatic permit renewal would remove the incentive to submit reports in a timely manner. Additionally, the current practice of vessel permit renewals maintains a trigger by which vessel owners submit up-to-date ownership information. This data collection is essential to ensure that vessel owners are made aware of regulatory changes through mailings and/or direct phone calls in a very dynamic fisheries regulatory environment and provide NOAA Fisheries Service Office of Law Enforcement the most up-to-date information on vessel ownership.

4.4.2 Reinstate a Hard Application Deadline for All Limited Access Permits

This alternative would implement a ‘hard’ deadline for completed limited access permit renewal applications 30 days prior to the start of the fishing year for which the permit is required. Failure to submit a completed renewal application before the deadline would result in the forfeiture of the permit.

Rejection rationale: This action is the most straight-forward and least administratively burdensome solution to preventing vessels from delaying their permit renewal to fish in State waters and was the way permit renewals were originally implemented for most limited access fisheries. This alternative would be the least burdensome for the Agency to implement. However, the penalty for missing the deadline was considered to be too severe and was therefore revised to the current system identified under the no-action alternative in section 4.3.0 in the 1999 “Consistency Amendment” (64 FR 8263 February 19, 1999).

5.0 AFFECTED ENVIRONMENT

5.1 Introduction

The physical and biological environments affected by this action encompass marine waters and benthos of the Atlantic Ocean from Maine to North Carolina, from the shoreline to 200 miles offshore. This area is also known as the Northeast continental shelf ecosystem and is described in great detail in “Ecology of the Northeast Continental Shelf” (Fogarty 2005) and in NOAA Technical Memorandum NMFS-NE-181, Characterization of the Fishing Practices and Marine Benthic Ecosystems of the Northeast U.S. Shelf, and an Evaluation of the Potential Effects of Fishing on Essential Fish Habitat (NOAA 2004). This action affects behavior of Federal limited access commercial fishing vessel owners and operators of the Northeastern United States. As such, detailed descriptions of the environment in the context of each fishery are described in the most recent amendments to the FMPs: NE Multispecies Amendment 13, Atlantic Sea Scallop Amendment 10, NE Monkfish Amendment 2, Atlantic Surfclam and Ocean Quahog Amendment 13, Squid, Atlantic Mackerel, and Butterfish Amendment 8, Northeastern Skate Complex FMP, Summer Flounder, Scup, and Black Sea Bass Amendment 13, the Golden Tilefish FMP, and the Atlantic Deep-sea Red Crab FMP. Because the proposed action is primarily administrative in nature, detailed descriptions of the physical and biological environment and protected species are not included in the main body of this document. Because the proposed action is primarily administrative in nature, only a brief summary description of the physical and biological environment and protected species are included below.

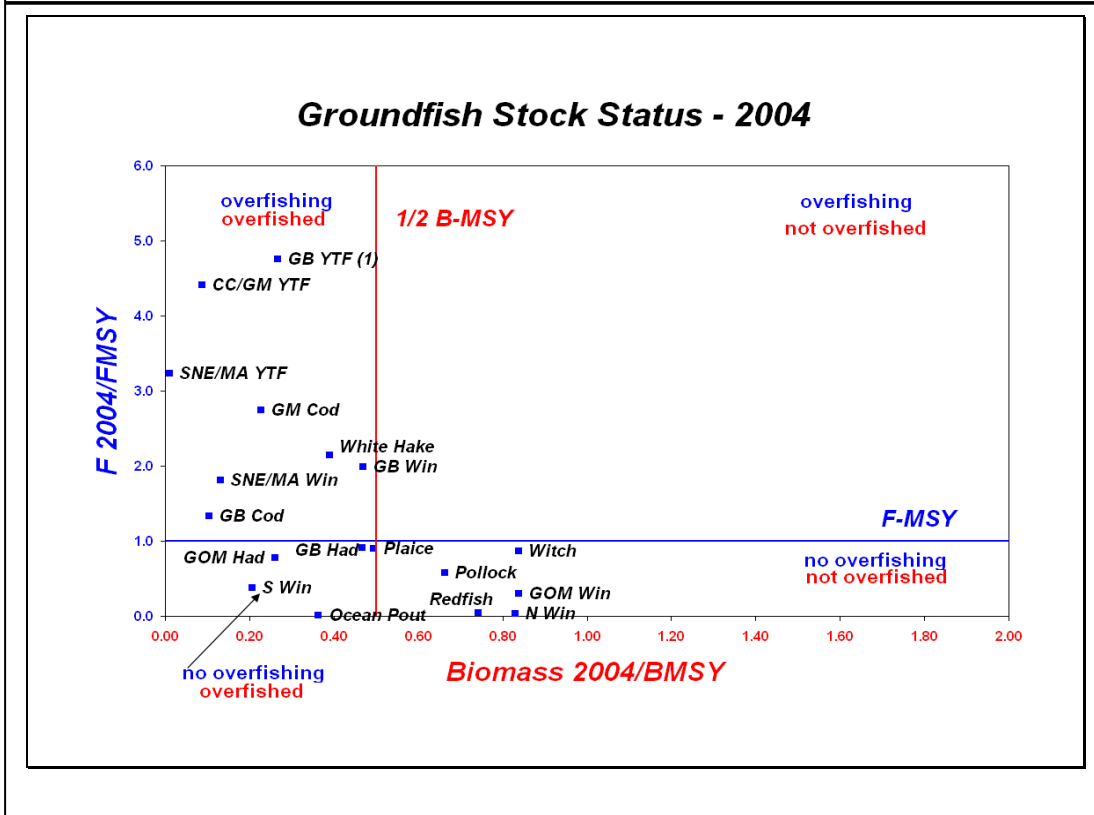
5.2 Physical and Biological Environment

Fish habitat, primarily the regulatory defined essential fish habitat (EFH), contain both physical and biological features and is described separately in the last paragraph of this

section. The Northeast U.S. Shelf Ecosystem, as described in NOAA Technical Memorandum NMFS-NE-181, includes the area from the Gulf of Maine (GOM) south to Cape Hatteras, extending from the coast seaward to the edge of the continental shelf, including the slope sea offshore to the Gulf Stream. The continental slope includes the area east of the shelf, out to a depth of 2000 m. Four distinct subregions comprise the Northeast Region: the GOM, Georges Bank, the Mid-Atlantic Bight (MAB), and the continental slope. The GOM is an enclosed coastal sea, characterized by relatively cold waters and deep basins, with a patchwork of various sediment types. Georges Bank is a relatively shallow coastal plateau that slopes gently from north to south and has steep submarine canyons on its eastern and southeastern edge. It is characterized by highly productive, well-mixed waters and strong currents. The MAB is comprised of the sandy, relatively flat, gently sloping continental shelf from Southern New England to Cape Hatteras, NC. The continental slope begins at the continental shelf break and continues eastward with increasing depth until it becomes the continental rise. It is fairly homogenous, with exceptions at the shelf break, some of the canyons, the Hudson Shelf Valley, and in areas of glacially rafted hard bottom.

The biological environment includes the fish species managed under the management plans identified in the introduction to this section as well as the species with which they directly and indirectly interact. The most recent status of the stocks managed under the aforementioned FMPs can be found at (<http://www.nmfs.noaa.gov/sfa/reports.html>). Figure 2 below depicts the most recent analysis of the state of groundfish stocks from the Groundfish Assessment Review Meeting (GARM) II. The status of the stocks for groundfish is included in this document because it is the species that initially raised concern regarding the regulatory loophole and is used as an example in analyses throughout this document due to this special concern.

Figure 2. 2004 Groundfish stock status from the GARM II.



NOAA Technical Memorandum NMFS-NE-181 describes in great detail the benthic communities associated with the Northeast continental shelf and the habitat associations between species. The biological environment also includes species that are protected by the Endangered Species Act and/or the Marine Mammal Protection Act. These species are address separately in the following section.

5.3 Protected and/or Endangered Species

The following endangered and/or protected species are known to occur in the Northeast continental shelf. For greater detail on the life history of these animals in the context of each fishery please refer to the latest amendment to the fishery of interest listed in Section 5.1.

Cetaceans

Northern right whale (<i>Eubalaena glacialis</i>)	Endangered
Humpback whale (<i>Megaptera novaeangliae</i>)	Endangered
Fin whale (<i>Balaenoptera physalus</i>)	Endangered
Blue whale (<i>Balaenoptera musculus</i>)	Endangered

Sei whale (<i>Balaenoptera borealis</i>)	Endangered
Sperm whale (<i>Physeter macrocephalus</i>)	Endangered
Minke whale (<i>Balaenoptera acutorostrata</i>)	Protected
Harbor porpoise (<i>Phocoena phocoena</i>)	Protected
Risso's dolphin (<i>Grampus griseus</i>)	Protected
Pilot whale (<i>Globicephala</i> spp.)	Protected
White-sided dolphin (<i>Lagenorhynchus acutus</i>)	Protected
Common dolphin (<i>Delphinus delphis</i>)	Protected
Spotted and striped dolphins (<i>Stenella</i> spp.)	Protected
Bottlenose dolphin (<i>Tursiops truncatus</i>)	Protected

Seals

Harbor seal (<i>Phoca vitulina</i>)	Protected
Gray seal (<i>Halichoerus grypus</i>)	Protected
Harp seal (<i>Phoca groenlandica</i>)	Protected

Sea Turtles

Leatherback sea turtle (<i>Dermochelys coriacea</i>)	Endangered
Kemp's ridley sea turtle (<i>Lepidochelys kempii</i>)	Endangered
Green sea turtle (<i>Chelonia mydas</i>)	Endangered
Hawksbill sea turtle (<i>Eretmochelys imbricata</i>)	Endangered
Loggerhead sea turtle (<i>Caretta caretta</i>)	Threatened

Fish

Shortnose sturgeon (<i>Acipenser brevirostrum</i>)	Endangered
Atlantic salmon (<i>Salmo salar</i>)	Endangered

Birds

Roseate tern (<i>Sterna dougallii dougallii</i>)	Endangered
Piping plover (<i>Charadrius melodus</i>)	Endangered

Critical Habitat Designations

Right whale Cape Cod Bay
Right whale Great South Channel

5.4 Habitat

The Northeast U.S. Shelf Ecosystem contains Essential Fish Habitat (EFH) for species managed through the FMPs listed in the Introduction (Section 5.1) to this section. For species managed under the NE Multispecies FMP, Atlantic Sea Scallop FMP, NE Monkfish FMP, Northeastern Skate Complex FMP, and Atlantic Deep-sea Red Crab FMP the latest EFH information is found in the Environmental Assessment completed for New England EFH Omnibus Amendments (New England Fishery Management Council October 7, 1998). For species managed under the Atlantic Surfclam and Ocean Quahog

FMP, Squid, Atlantic Mackerel, and Butterfish FMP, Summer Flounder, Scup, and Black Sea Bass FMP, and Golden Tilefish FMP please refer to Section 5.1 for the latest amendments to the individual FMP for that species.

5.5 Human Communities

Although there are slightly more than 7,000 limited access permits issued annually by the Northeast Regional Office, only about 2,100 vessels would be affected by this action as many vessels possess more than one limited access permit (between 2 and 8 limited access permits are issued per vessel) or possess only an American lobster limited access permit (approximately 1,600 vessels). In all, these participants generate close to 1 billion dollars annually from the sale of fish and shellfish.

For the purposes of many analyses in this document impacts to the NE multispecies are often used as a proxy to quantify the total impacts resulting from this action. The reason for choosing NE multispecies is because it was this fishery that has prompted the most concern because of the movement of these fish between state and Federal waters. Unless otherwise noted, examination of operations in other limited access fisheries indicate much less of an impact and/or exploitation of the regulatory loophole compared to NE multispecies. NE multispecies permit data compiled by the NE Regional Office indicate an average of 15 vessels delayed the renewal of their Federal limited access permits in 2004 and 2005 that also had landings both with and without their Federal permit. Between 2002 and 2005 only 9 vessels repeatedly delayed the renewal of their Federal limited access permit. These vessels accounted for approximately 323,490 lb NE multispecies landings in fishing year 2004 and 89,313 lb of NE multispecies in 2005. Of the total NE multispecies total, cod accounted for 25% and 40% of the NE multispecies total, respectively. The total weight of all NE multispecies reported by seafood dealers in 2004 was 86.3 million lb, of which cod accounted for 14.7 million pounds. Thus, in 2004 the delay in permit renewal accounted for 0.3% of NE multispecies and 0.5% of cod.

In addition to vessels delaying their permit renewal some vessels are replaced by another fishing vessel. The former, replaced vessel may then continue to fish outside of Federal regulations in state waters. Across all limited access fisheries around 7 vessels per year land fish as a result of replacing a vessel and then continue to fish with the old vessel. For NE multispecies 3,516 lb and 230 lb were landed by vessels after replacement in 2004 and 2005, respectively. Figure 3 below illustrates current vessel renewal practices by vessel owners who possess limited access NE multispecies permits. An average of 94% of vessel owners renew their permit by May 1 over the last few years. Figure 6 shows that the compliance with renewing limited access permits prior to the start of the fishing year is consistently high (above 90%) in all fisheries. With this compliance only 370 entities (10% of 3,700) may be affected by this action. Figure 4 shows the current number of vessel replacements that number greater than one per year in the NE multispecies fishery. With the exception of the unusually large amount of multiple replacements that occurred in 2004, most other fisheries, including scallop and summer flounder, have similar or less double replacements per year.

Figure 3. Federal limited access NE multispecies vessel permit renewals by month for the period 2000-2005

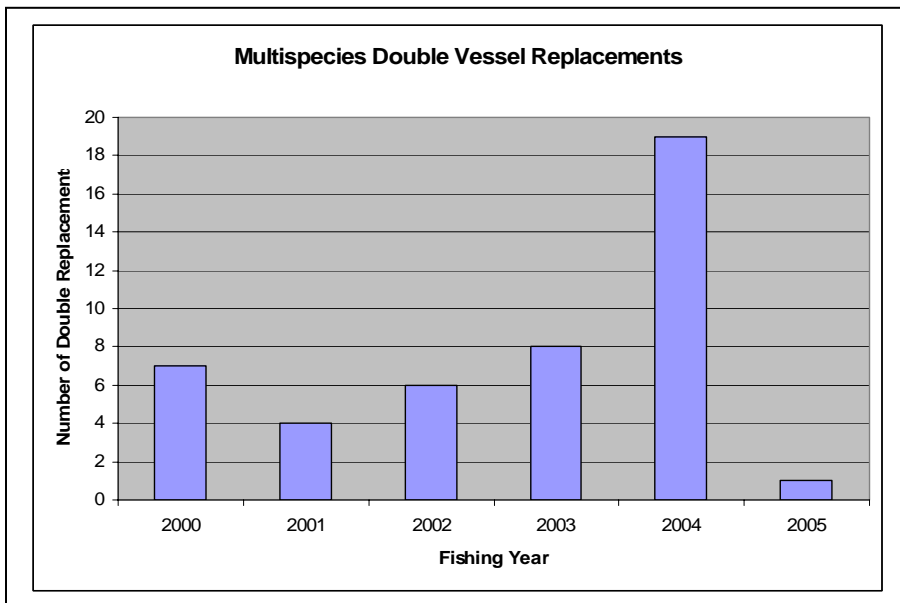
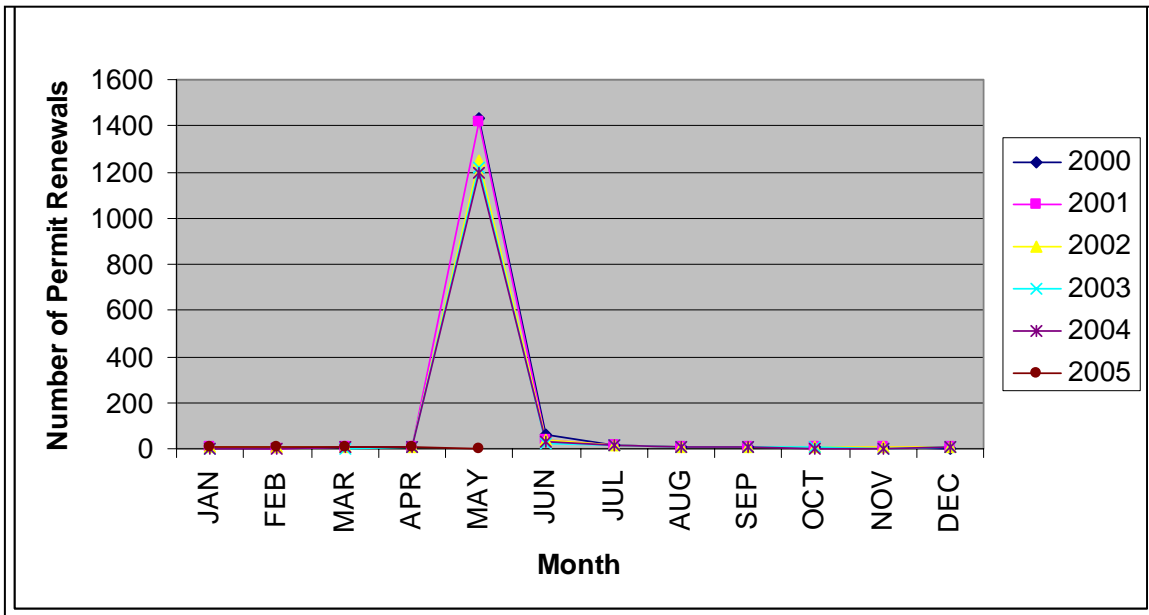


Figure 4. The number of double vessel replacements (a double replacement is a suite of limited access permits moving from one vessel to another more than once in a permit year) for limited access NE multispecies permits per year.

Figure 6. Permit year 2004 compliance with limited access permit renewal prior to start of permit year

LIMITED ACCESS FISHERY	PERCENT RENEWED PRIOR TO START OF 2004 FISHING YEAR
NE Multispecies	91.88%
Scallop	97.52%
Monkfish	96.61%
Squid, Mackerel, Butterfish	93.75%
Summer Flounder	94.96%
Scup	94.62%
Black Sea Bass	91.58%

6.0 ENVIRONMENTAL CONSEQUENCES—ANALYSIS OF IMPACTS

This action proposes to modify the current commercial fishing vessel permit renewal process. This action is necessary to prevent excess fishing mortality from occurring on species across fishery management plans in the Northeastern United States caused by vessels fishing under two separate fishing programs within the same permit year. Under current regulations, vessels can fish exclusively under state regulations for part of a fishing year by delaying the renewal of their Federal permit or transferring their Federal permit onto a secondary vessel. This action would require fishermen to commit to fish exclusively under state and Federal regulations or exclusively under state regulations for the entire fishing year. The impacts of the preferred alternative are compared to the No Action alternative and one other alternative that would also achieve the objectives of this action. Discussion of the impacts are often analyzed within the context of DAS fisheries, as these are the fisheries where the impacts are expected to be most realized. As stated previously, in 2004 delayed permit renewal accounted for less than 1% of the total commercial landings in the NE multispecies, scallop, and monkfish fisheries. Many other fisheries operate under a hard quota that is developed in coordination with the states. In these cases effort is controlled by the amount of quota available to the state, regardless if the vessel is permitted to fish in Federal or state waters. These alternatives are described with respect to biological, protected species, habitat, economic, and social impacts.

6.1 Alternative 1—Preferred Alternative

This action would modify the current commercial fishing vessel possession regulations for vessels that were issued Federal limited access permit(s) for the preceding permit year by prohibiting the possession of regulated species for which the vessel would be otherwise eligible to retain under their respective limited access permit until such time that the Federal limited access permit has been renewed, relinquished, or transferred through a vessel replacement. This action would only impact Federal limited access

commercial fishing vessel permits issued from the Northeast Regional Office (excluding American lobster). A vessel issued only Federal open access permit(s) or vessels only possessing state fishing permits would not be affected. In addition, this action would limit the number of vessel replacements to one replacement per permit year except in the case when a vessel has been rendered inoperable and non-repairable. The provisions for this action are detailed in section 4.1.2. It should be noted that Federal regulations are rarely the exclusive authority for fishing regulations. Vessels that have both Federal and State permits are bound by the more restrictive of the regulations in effect. In contrast, vessels can be permitted exclusively by the state to fish in state territorial waters and be subject to only state fishing regulations.

6.1.2 Biological Impacts

The provisions of this alternative would have a negligible direct impact on the biological environment. These provisions are necessary to prohibit the practice of delaying the renewal of a Federal limited access permit in order to fish exclusively under state regulations and then later within the same fishing year renew the Federal limited access permit in order to fish under those regulations. This practice is of considerable importance to fisheries using a DAS fishing effort control program, e.g., the NE multispecies fishery. NE multispecies permit data compiled by the NE Regional Office indicate an average of 15 vessels delayed the renewal of their Federal limited access permits in 2004 and 2005 that also had landings both with and without their Federal permit. Between 2002 and 2005 only 9 vessels repeatedly delayed the renewal of their Federal limited access permit. These vessels accounted for approximately 323,490 lb NE multispecies landings in fishing year 2004 and 89,313 lb of NE multispecies in 2005. Of the total NE multispecies total, cod accounted for 25% and 40% of the NE multispecies total, respectively. The total weight of all NE multispecies reported by seafood dealers in 2004 was 86.3 million lb, of which cod accounted for 14.7 million pounds. Thus, in 2004 the delay in permit renewal accounted for 0.3% of NE multispecies and 0.5% of cod. An analysis of this practice across other limited access fisheries was conducted and found that less than 75 vessels in both 2004 and 2005 delayed the renewal of their limited access permits and also had landings during the time that the permit wasn't renewed. Many fisheries operate under a hard quota that is developed in coordination with the states. In these cases effort is controlled by the amount of quota available to the state, regardless if the vessel is permitted to fish in Federal or state waters. The other DAS-controlled fisheries in the NE Region are Atlantic sea scallop, monkfish, and deep-sea red crab. Of these only the monkfish and scallop fisheries had landings when a limited access permit was delayed in renewal. In 2004 and 2005, monkfish landed in this way totaled 110,779 lb and 74,563 lb in live weight respectively. For scallops the total meat weight (landed weight) was 22,269 lb and 8,746 lb in 2004 and 2005, respectively.

The purpose of the DAS program is to manage fishing effort for federally-permitted vessels. Effort accrued outside of measures implemented under the FMPs was not contemplated under the FMPs and therefore is considered effort not accounted for. Although minimal, the potential for effort to increase could undermine the objectives of

the FMPs with programs that utilize the DAS system. When vessels fish under the two very different regulatory programs within the same fishing year there is the potential that fishing effort would be increased above that which can be supported by the resource. Over 8 million lb of GOM cod were caught in the 2004 fishing year, 4 million of which was landed in Massachusetts. Of the 4 million lb, 82,730 lb were landed by vessels that delayed the renewal of their Federal permit. Thus this action has the potential to either decrease GOM cod landings in Massachusetts by approximately 2% or shift the 2% to the Federal fishery. It is not clear if the vessels that contributed to the 82,730 lb of cod later utilized all of their allocated DAS. This would be the greatest impact on any state with cod landings. It should be noted that in 2004 only 77% of the target total allowable catch was reached for GOM cod. In 2005 total GOM cod landings totaled 7.5 million lb. In 2005, 35,283 lb of cod was landed by vessels that delayed the renewal of their Federal permit- a decrease of 42.6% from the previous fishing year. Although this is not a substantial amount in the context of the fishery as a whole, the potential for more people to exploit the current regulatory loophole in the future is substantial enough to warrant action to close the loophole. In summary, there are conservation benefits to this alternative and no additional negative impacts to the biological environment.

6.1.3 Impacts on Endangered and Other Protected Species

As mentioned in the preceding section, it is anticipated that this action would likely result in a slight reduction in fishing effort. However it isn't clear if the effort reduction will occur in state or Federal waters. Depending on the target species some vessel owners may decide that it may be advantageous to fish only in state waters and forego their Federal limited access permit eligibility. Whether inshore or offshore, the result of this effort reduction could be a reduction in the potential interactions between fishing gear and endangered or other protected species.

6.1.4 Habitat Impacts

As mentioned in section 8.1.2, it is anticipated that this action would likely result in a slight reduction in fishing effort. However it isn't clear if the effort reduction would occur primarily in state or Federal waters. Depending on the target species, some vessel owners may decide that it may be more advantageous to fish only in state waters and forego their Federal limited access permit eligibility. Whether inshore or offshore, the result of this effort reduction is the reduction of the potential interactions between fishing gear and habitat, including essential fish habitat (EFH). The affected habitat type would depend on the fishery type and where that fishery is normally prosecuted.

6.1.5 Impacts on Human Communities

Analysis of the exploitation of this regulatory loophole indicates that it has only recently developed as a problem in the NE multispecies DAS fishery in the State of

Massachusetts. By taking this action now, before additional fishing vessels begin to exploit this loophole, as a way to increase fishing effort, economic impacts are kept to a minimum. The State of Massachusetts recently implemented its own regulations prohibiting vessels which are eligible to renew a Federal limited access permit from obtaining a groundfish state endorsement. Thus, for Massachusetts state waters where this was first identified as a problem, many of the objectives of this action have already been realized. Economic impacts resulting from this action are considered to be negligible to the fishing community. As stated previously, a very small percentage of overall landings by limited access permitted vessels can be attributed to vessels that were eligible for a limited access permit in the previous year and then landed catch the following year without a Federal limited access permit issued to the vessel. However, it can not be assumed that other eligible inshore state-only fishing vessels could not have eventually caught the fish landed by those who were eligible for Federal permits.

The economic impacts of reducing the number of fishing vessel replacements within the same fishing year are also likely to be negligible. As Figures 3 and 4 in the Affected Environment section shows this restriction will impact between 20-50 entities in a given year depending on the permit type. Also, as mentioned elsewhere in this document, out of an average of 84 multispecies vessel replacements annually between 2000 and 2005, only an average of 8 vessel replacements over the same time period replaced the same vessel more than once (less than 1%). Potentially 1% of multispecies permitted vessel owners seeking to replace their vessel for a second time would be prohibited from doing so until the beginning of the next permit year. These numbers are similar to those in other limited access fisheries. If the sale of a vessel is at issue then some economic impact may be realized. However, with modest planning the vessel replacement provision should not hinder the business practices of the majority of vessel owners.

Social impacts from any of the proposed alternatives are not anticipated as all the management measures set forth in this document allow the vast majority of fishing businesses to operate at status quo.

6.2 Alternative 2

This action would also modify the current commercial fishing vessel limited access permit renewal process. However, this alternative places a “soft” deadline on the limited access permit renewal. It is anticipated that impacts to the biological and physical environment, protected species, and essential fish habitat would be similar as in the preferred alternative. The difference between the two is that under the preferred alternative all fishing would be prohibited until the vessel renewed or relinquished its Federal limited access permit. Under this non-preferred alternative the vessel would remain eligible to fish under a state fishing program even if it was eligible for, but not renewed, a Federal limited access permit. However, if the vessel does not renew the Federal limited access permit prior to the start of the permit year then the vessel would be prohibited from participating in the Federal fishery for the entire permit year. These alternatives diverge in the human (economic) impacts as the provisions in Alternative 2

call for a creation of an entirely new reserve permit category and deadline which would create a permit renewal burden not present under the current regulations. The one-time per year vessel replacement provision is the same as outlined in the agency's Preferred Alternative. This alternative is detailed in Sections 4.2.0 and 6.1.

6.2.1 Biological Impacts

The biological impacts of this action would be similar to that under the preferred alternative described in section 6.1.2. In conclusion, there are conservation benefits to this alternative but no additional negative impacts to the biological environment.

6.2.2 Impacts on Endangered and Other Protected Species

As mentioned in the preceding section, fishing effort, and thus potential interactions with endangered or protected species, would not increase under this alternative. Overall fishing effort, especially in inshore areas, is expected to decrease under both the Preferred Alternative and Alternative 2. Depending on the target species, some vessel owners may decide that it may be advantageous to fish only in state waters and forego their Federal limited access permit eligibility. Whether fishing occurs inshore or offshore, the result of this effort reduction would be a reduction in the potential interactions between fishing gear and endangered or other protected species.

6.2.3 Habitat Impacts

As mentioned in the preceding section, fishing effort, and thus potential interactions with habitat, would not increase with this alternative. Depending on the target species, some vessel owners may decide that it may be advantageous to fish only in state waters and forego their Federal limited access permit eligibility. Whether fishing occurs inshore or offshore, the result of this effort reduction would be the reduction of potential interactions between fishing gear and habitat, including EFH.

6.2.4 Impacts on Human Communities

Negative economic impacts under this alternative will likely be slightly greater than that experienced under the status quo and greater than that under the Preferred Alternative. Vessel owners that do not renew their permit by the start of the permit year would be prohibited from fishing in the Federal program for the entire permit year. The vessel would remain eligible to renew its permit(s) the following fishing year provided a reserve permit had been issued to the vessel prior to the end of the permit year. Figure 3 in Section 4.1.1 clearly shows that in the NE multispecies limited access fishery, of those that delay their permit renewal, most renew within the first two months after the start of the permit year. For example, in 2003, 40% (37 out of 93 vessels out of a total of 1,309 vessels renewing for the year) of the vessels that did not renew at the start of the permit

year renewed in the first 2 months after the start of the permit year. As a result the potential impact to the fisheries is not currently considered substantial.

Analysis of the exploitation of this regulatory loophole indicates that it has only recently developed as a problem in the NE multispecies DAS fishery in the State of Massachusetts. By taking this action now, before additional fishing vessels begin to exploit this loophole, as a way to increase fishing effort, economic impacts are kept to a minimum. The State of Massachusetts recently implemented its own regulations prohibiting vessels which are eligible to renew a Federal limited access permit from obtaining a groundfish state endorsement. Thus, for Massachusetts state waters where this was first identified as a problem, many of the objectives of this action have already been realized. Economic impacts resulting from this action are considered to be negligible to the fishing community. Reducing the number of vessel replacements per year will impact the way some businesses operate. NOAA Fisheries Service does not collect data on the reasons why an individual or business replaces their fishing vessel more than once in a permit year. Anecdotally vessels are replaced due to simply replace an older out-of-date, or less safe vessel; to sell a suite of limited access permits without involving an operational fishing vessel; to move permits back and forth to a vessel that may be more appropriate for a fishing location (e.g. inshore or offshore), or fishing season (e.g. summer or winter). Nothing in this proposed rule would prohibit the replacement of a vessel that is no longer operable. As Figure 4 shows it is only as small number of vessels (usually less than 10 with the exception of the 2004 permit year) that may have to change a business practice due to this proposed action.

The economic impacts of reducing the number of fishing vessel replacements within the same fishing year are also likely to be negligible. As Figure 4 in the Affected Environment section shows this restriction will not likely impact more than 18 entities in a given year. The average number of NE multispecies double and single replacements during the 5-year period 2000-2004 was greater than 80. As mentioned elsewhere in this document, an average of 84 NE multispecies vessel replacements occurred annually between 2000 and 2005. Only an average of 8 vessel replacements over the same time period replaced the same vessel more than once (less than 1%). So potentially 1% of NE multispecies permitted vessel owners seeking to replace their vessel for a second time would be prohibited from doing so until the beginning of the next permit year. If the sale of a vessel is at issue then some economic impact may be realized. However, with modest planning the vessel replacement provision should not hinder the business practices of the majority of vessel owners.

Social impacts from any of the proposed alternatives are not anticipated as all the management measures set forth in this document allow the vast majority of fishing businesses to operate normally.

6.3 No Action Alternative (Status Quo)

The Status Quo Alternative represents management measures that were implemented through the Fishery Management Plan Amendments to Achieve Regulatory Consistency

on Permit Related Provisions for Vessels Issued Limited Access Federal Fishing Permits (Consistency Amendment) that was published in the Federal Register on February 19, 1999 (64 FR 8263).

6.3.1 Biological Impacts

An analysis of data conducted by NE Region staff for the 2004 fishing year indicate that approximately 82,730 lb of cod were harvested by vessels that were eligible for Federal limited access NE multispecies permits but opted to delay permit renewal in order to fish outside of the NE multispecies DAS program in state waters. The total landings of cod reported by dealers in 2004 was 14.7 million lb (0.5% of coastwide landings in the 2004 fishing year). In the monkfish fishery, 110,779 lb of monkfish was landed by vessels that delayed their permit renewal which equaled 0.32% of total landings in that year (34 million lb). In the sea scallop fishery 0.03% of scallops were landed by vessels that delayed the renewal of their Federal permit. The largest contribution of landings from delayed permit renewal came from landings of winter flounder in fishing year 2004. In 2004, landings of winter flounder by vessels that delayed the renewal of their Federal permit totaled 170,354 lb. This equaled approximately 1.7% of the total landings of winter flounder in the 2004 fishing year. The result of this action would potentially place future such landings under the control of the Federal DAS effort-control program.

The status-quo alternative would allow this level of effort outside of a Federal fishing program to continue and to perhaps increase. Fishing effort on groundfish by a vessel eligible for a Federal multispecies limited access DAS permit, but outside the DAS program, is effort that threatens to exceed the target total allowable catch for groundfish. However, it should be noted that this potential effort increase would not occur in Massachusetts state waters as this state has already implemented measures to prohibit vessels eligible for a Federal permit from obtaining a state groundfish endorsement.

6.3.2 Impacts on Endangered and Other Protected Species

The current level of exploitation of the regulatory loophole described in this document is very low in comparison to the level of fishing effort currently exerted, not only in the NE multispecies fishery, but in other fisheries as well. Thus, while the status quo may see an slight increase in fishing effort, especially in inshore areas, the potential increase in interactions between fishing gear and endangered or protected species would see either no change, or only a slight increase.

6.3.3 Habitat Impacts

The current level of exploitation of the loophole is very low in comparison to the level of fishing effort currently exerted not only in the NE multispecies fishery but in other fisheries as well. While the status quo may see a slight increase in fishing effort,

especially in inshore areas, the potential increase in interactions between fishing gear habitat only a slight increase.

6.3.4 Economic Impacts

The economic impacts of maintaining status quo would only be realized if there was an increase in the exploitation of this loophole that resulted in higher than anticipated fishing mortality that would then in turn trigger more conservative fishing regulations. Potentially, some fishermen could profit in the short-term by exploiting the loophole, but in the long-term, if fishing mortality objectives are not met, all participants could potentially be required to reduce fishing effort.

The social impacts of the status quo are already present in the fishery. Some vessel owners may see other vessel owners exploiting the regulatory loophole and perceive a competitive advantage by these vessels taking form. Without regulations reinforcing the current intent of the regulations there is no regulatory means to discourage this behavior. Thus there is an incentive for the vessels that traditionally renew their Federal permit prior to the start of the permit year to find a way that they can exploit the regulations so that another entity no longer has an advantage by virtue of a permitting loophole. As a result, it is expected that under the status quo alternative more vessels may begin exploiting this loophole through moving permits between a primary and secondary vessel or by delaying their permit renewal if the first option is not available. As mentioned earlier in this document, the State of Massachusetts has already implemented regulations preventing this from occurring in its territorial waters but other states have yet to take action.

6.4 Cumulative Impacts of the Preferred Alternative

6.4.1 Introduction to Cumulative Impacts

A cumulative effects analysis is required by the Council on Environmental Quality (CEQ) (40 CFR part 1508.7). The concept behind cumulative effects analysis is to capture the total effects of many actions over time that would be missed by evaluating each action individually. CEQ guidelines recognize that it is not practical to analyze the cumulative effects of an action from every conceivable perspective but rather, the intent is to focus on those effects that are truly meaningful. This section analyzes the potential direct and indirect effects of the proposed action (summarized from Section 6.1) together with past, present, and reasonably foreseeable future actions as well as factors external to the fisheries that affect physical, biological, and economic resource components. Although predictions of synergistic effects from multiple sources are inherently less certain than predicted effects of individual actions, cumulative effects analyses are intended to alert decision makers to potential “hidden” consequences of the proposed actions.

The information presented in Section 5.0 (Affected Environment) describes the fishing history, natural history and current status of the resources and human environment. This helps characterize the environmental baseline against which to evaluate cumulative effects and serves as a starting point for the cumulative effects analysis.

Valued Ecosystem Components

The cumulative effects analysis focuses on the following valued ecosystem components (VECs):

1. Biological (impacts to the various FMP species affected by this action)
2. Endangered and other protected species;
3. Habitat; and
4. Human communities.

The range of VECs chosen was limited to those for which a reasonable likelihood of meaningful impacts is expected. This is based on the environmental components that have historically been impacted by fishing, and statutory requirements to complete assessments of these factors under the Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, Regulatory Flexibility Act, and several Executive Orders. The VECs are intentionally broad to allow for flexibility in assessing all potential environmental factors that are likely to be impacted by the action.

Temporal and Geographic Scope

While the effects of historical fisheries are considered, the temporal scope of past and present actions for the various fisheries, habitat and the human environment is primarily focused on actions that have taken place since implementation of the first limited access permits (1993-1994). This period was chosen because prior to this timeframe, limited access renewal and replacement restrictions were not in effect. For endangered and other protected species, the context is largely focused on the 1980s and 1990s, when NMFS began generating stock assessments for marine mammals and turtles that inhabit waters of the U.S. EEZ. In terms of future actions, the analysis examines the period between implementation of this action (expected in 2007) and five years into the future. This was chosen because the regulatory environment of fisheries actions is fluid and it is unlikely that predictions beyond five years can be made with any degree of certainty. The geographic scope of the analysis of impacts to the various VECs is the mid-Atlantic and North Atlantic Ocean, from the U.S.-Canada border to, and including North Carolina.

6.4.2 Past, Present, and Reasonably Foreseeable Future Actions (RFFA)

Past and Present Actions

In the past, as limited access permit programs were implemented, there was a hard application deadline for renewing limited access permits. If the permit was not renewed prior to the deadline the permit was permanently surrendered. However, the Agency

deemed this deadline too restrictive and revised the deadline to its current definition as outlined in Section 3.1 (Background). The 1999 “Consistency Amendment” (64 FR 8263, February 19, 1999), in addition to changing the aforementioned application deadline also made vessel replacement provisions consistent across all fisheries. Prior to the Consistency Amendment each fishery management plan implemented replacement provisions specific to one particular fishery which often conflicted with replacement provisions in other fisheries. Currently all limited access fisheries with the exception of American lobster have the same vessel size and horsepower restrictions transfer and upgrade restrictions. There is currently no limit on the number of transfers that a vessel is permitted to apply for each year. In late 2005 the Massachusetts Division of Marine Fisheries implemented regulations that prohibited vessels permitted with a Federal multispecies permit from receiving a State groundfish endorsement. This action effectively causes Massachusetts State registered boats that are eligible for a Federal open access or limited access NE multispecies permit to fish under the Federal fishing program or permanently surrender their Federal NE multispecies permit in order to apply for the State groundfish endorsement.

Reasonably Foreseeable Future Actions (RFFA)

There are no actions currently scheduled that would impact the vessel permitting application process or the vessel replacement process. It can be speculated that if the fishery management councils implement quota rationing programs there may be less of a need for some of the provisions of this action. It is difficult at this point to speculate what aspects of this program would not be needed without knowing what kind of quota rationing program would be implemented. It is not anticipated that any actions in the reasonably foreseeable future would further restrict vessel replacements and limited access vessel permit renewals. Any new fishery management plans implemented in the near future would be required to include the vessel permitting and vessel replacement provisions that are adopted by NOAA Fisheries Service.

6.4.3 Cumulative Biological Impacts

The cumulative biological impacts of past and present actions, and RFFA are expected to be negligible. As detailed Section 6.1.2, this action is anticipated to have a small positive impact to the biological resources of the U.S. EEZ. No other Federal permitting actions that impact the timing and frequency of permit applications are anticipated. Actions that impact the biological resources of the U.S. EEZ are guaranteed as NOAA Fisheries. This action is expected to compliment future actions by closing a loophole that allows some vessel owners to fish for the same species under two different sets of regulations in the same fishing year.

6.4.4 Cumulative Impacts on Endangered and Other Protected Species

The cumulative impacts of past and present actions, and RFFA on endangered and other protected species are expected to be negligible. As detailed in Section 6.1.3, this action is anticipated to have a small positive impact to endangered and other protected species due

to a slight reduction in fishing effort. The impact of this action in the reasonably foreseeable future would likely not differ from the slight positive benefit resulting from the anticipated small reduction in fishing effort..

6.4.5 Cumulative Impacts on Habitat

The cumulative impacts of past and present actions, and RFFA on habitat are expected to be positive. As detailed in Section 6.1.4, this action should likely result in a small reduction in fishing effort. Based on the analysis of present impacts, it is not anticipated that the preferred alternative would result in any cumulative impacts on habitat other than the slight positive impact due to a small reduction in fishing effort.

6.4.6 Cumulative Impacts on Human Communities

The cumulative impacts of this action combined with past and present actions, and RFFA on human communities are expected to be negligible. Section 6.1.5 details the anticipated impacts resulting from this action. This proposed action when viewed in the context of past, present, and future actions does not result in any significant cumulative impacts. Any additional regulation may increase perceived complexity in abiding by the cumulative regulations. However, this rule attempts to make the management measures simple so as to make compliance with the permitting and vessel replacement provisions simple. One objective of this action is to clarify the intent of the current regulations to prevent future exploitation of a regulatory loophole

7.0 FINDING OF NO SIGNIFICANT IMPACT

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

Response: No. This action is expected to reduce fishing effort on regulated species. Please refer to Section 6.1.2 for more information on the biological impacts of this action.

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

Response: No. This action is expected to reduce fishing effort on target species; non-target species would see a proportional reduction effort. Please refer to Section 6.1.2 for more information on the biological impacts of this action.

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?

Response: No. The expected reduction in fishing effort would have a proportional reduction on fishery-related habitat interactions. Please refer to Section 6.1.4 for more information on the biological impacts of this action.

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

Response: No. It is not expected that this action would have any public health or safety repercussions that do not already exist in the fishing industry. Please see Section 6.1.5 for more detail on the impacts to human communities.

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Response: No. The expected result of this action in that fishing effort would be reduced. Thus interactions endangered or threatened species should be reduced or remain unchanged from the level that currently exists in the affected fisheries. Please see Section 6.1.3 for more detail on the impact of this action to endangered and other protected species.

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: No impacts on biodiversity or predator prey relationships are anticipated due to the anticipation that the proposed action reduces fishing effort. This action is applicable to all limited access commercial fisheries equally.

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: No. Social and economic impacts from the anticipated reduction in fishing effort, and thus fishing-related mortality, are expected to be minimal. Section 6.1.5 of the environmental assessment describes the impact to the human environment. As described in this section the impact is minimal because the loophole that this action intends to close is only exploited by a small minority of the overall fishing fleet.

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No. This action is supported by the Fishery Management Councils and state management agencies. Closing this loophole would treat all vessels equally, and therefore would likely be viewed favorably by majority of fishery participants who may not be willing or able to exploit the regulatory loophole.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response: No. The area of the proposed action includes the Stellwagen Bank and the Monitor National Marine Sanctuaries. However, as this action would likely reduce fishing effort, no impact above that already existing in the environment is anticipated.

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: No. The analysis of this permitting action shows that over 90% of all limited access permit holders would not be impacted by this action. Since unknown risks are by their very nature unknown one can not confidently comment on whether or not there will be unknown risks without making the risk known.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: No. This action complements the objectives of the FMPs of the affected fisheries but it is anticipated that any impacts from this action would only bolster analyses associated with the latest amendments to the FMPs.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: No such resources are adversely affected by the proposed permit action.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: No. It is not anticipated that this action could reasonably result in the introduction or spread of a non-indigenous species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response: No. This action adheres to the original intent of the permit renewal regulations. It will not likely set a precedent with regards to future actions.

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: No. The purpose of this regulation is to strengthen regulations implemented for the conservation and management of marine resources in the U.S. EEZ. Furthermore this law must comply with the enforceable policies of the coastal states under the U.S. Coastal Zone Management Act.

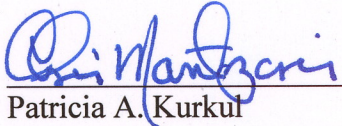
16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: No. This action can not reasonably be expected to result in cumulative adverse effects on target and non-target species. This action should likely result in a slight decrease in fishing effort in marine waters. Section 6.4 further details the cumulative effects of this action.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for the state and Federal permit reconciliation rule, it is hereby determined that the state and Federal permit reconciliation rule will not significantly impact the quality of the human environment as described

above and in the supporting Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.



for
Patricia A. Kurkul
Regional Administrator

6/28/07

Date

8.0 OTHER APPLICABLE LAWS

8.1 Marine Mammal Protection Act

Fishing activities conducted under this proposed action would not likely have adverse impacts on marine mammals.

8.2 Endangered Species Act

Given that the action is administrative in nature and changes in the amount and location of effort to a degree that would change effects to ESA-listed species are not expected, then the action should have no effect on ESA-listed species that occur in the area affected by this action. Thus, fishing activities pursuant to this proposed action would not likely affect endangered and threatened species in any manner not considered in prior consultations on the affected fisheries.

8.3 Coastal Zone Management Act

This action was determined to be consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination was submitted for review by the responsible state agencies on March 27, 2007, under section 307 of the Coastal Zone Management Act. As of June 26, 2007, concurrence letters were received from the states of New Hampshire, Rhode Island, Connecticut, New Jersey, Delaware, Virginia, and North Carolina. No response has been received from Maine, Massachusetts, New York, and Maryland, so consistency was inferred.

8.4 Administrative Procedures Act

This action complies with the Administrative Procedures Act.

8.5 Information Quality Act

Pursuant to Section 515 of Public Law 106-554 (the Information Quality Act), this information product has undergone a pre-dissemination review by the Northeast Regional Office, completed on November 8, 2006. The signed Pre-dissemination Review and Documentation Form is on file with the National Marine Fisheries Service, Northeast Regional Office, Sustainable Fisheries Division.

8.6 Paperwork Reduction Act

The preferred alternative for this action does not contain any additional information collection requirements subject to the Paperwork Reduction Act. The permit application

and vessel replacement applications are covered under the Northeast Region Permit Family of Forms (OMB # 0648-0202) that will expire June 30, 2007. 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.

8.7 Executive Order 13132

The preferred alternative for this action does not contain any federalism implications under E.O. 13132. Specifically this action does not impose any substantial direct costs on state or local government that would not be required by state law, and this action would not preempt state law.

8.8 Executive Order 12866

In order to evaluate the significance of the preferred alternative of this proposed action the following four questions are used.

A. Will the action likely have an annual effect on the economy of \$100 million or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, job, the environment, public health or safety, or state, local, or tribal governments or communities?

The proposed action will not likely have an effect on the economy in excess of \$100 million as the number of affect entities (less than 3,700) is small and the reduction in ex-vessel sales is estimated to be between \$0 and \$200,000. Additionally, this proposed action would not affect in a material way the economy, a sector of the economy, productivity, competition, job, the environment, public health or safety, or state, local, or tribal governments or communities.

B. Will this action likely create a serious inconsistency or otherwise interfere with an action taken or planned by another agency?

This proposed action would not likely create an inconsistency or interfere with an action taken or planned by another Federal agency. This action is intended to facilitate consistency between Federal and state marine fisheries management agencies.

C. Will this action likely materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof?

This proposed action would not likely affect or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

D. Will this action likely raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order?

This proposed action would not likely raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. This action is intended to better fulfill the management objectives of the fishery management plans of the Northeastern United States promulgated under the Magnuson-Stevens Fishery Conservation and Management Act.

8.9 Initial Regulatory Flexibility Analysis

NOAA Fisheries Service is proposing to modify the permitting and vessel replacement regulations through this action. Specifically, this action would reduce the ability of a vessel owner to fish under two mutually exclusive fishing programs for the same fishery within a permit year. The purpose of this action to remove an unintended consequence of the current permit renewal system that effectively allows for a temporary relinquishment of a Federal limited access permit for part of the permit year. This action would reinforce commercial fishing vessel permit renewal procedures currently practiced by an overwhelming majority of limited access permit holders and is deemed necessary before additional vessels begin to regard this loophole as an advantage that should be utilized to stay competitive necessitating additional regulatory restrictions. NOAA Fisheries Service exclusively regulates commercial fishing permit programs in Federal waters. Thus this action does not overlap or duplicate regulations of other Federal agencies. However, this action is meant to complement the objectives of state fishery management agencies by reducing the incentive of Federally-permitted limited access commercial fishing vessels to fish outside the Federal fishery program for which they are eligible. This action does not increase the record keeping and reporting requirements that have previously been approved under the Office of Management and Budget's control number 0648-0202.

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 dollars 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.

Data compiled by NE Region staff from the 2004 fishing year indicate that 64 vessels delayed their permit renewal and made landings during the time the Federal permit was invalid. In the same year 8 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% of vessel owners renew their permit by May 1 over the last few years. With this compliance, only 370 entities,

including vessels that reported landings during this time period, may be affected by the permit renewal portion of this action.

Economic Impacts of this Proposed Action

Analyses of data showed that only a small number of vessels currently exploit this loophole. This action would affect all limited access fisheries in the Northeast Region, however a fishery of particular concern is the Gulf of Maine (GOM) and Georges Bank (GB) cod stocks. 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 14,401 lb (86,409 lb total) of cod was landed by 11 fishing vessels (total NE multispecies limited access permits in FY 2004 was approximately 4,000) 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 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 potentially cause a slightly negative economic impact of less than 1% 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 whole weight (N= 21), and 3,270 lb (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 Federal permit renewal in order to fish exclusively under a state permit.

Economic Impacts of Alternatives to the Proposed Action

A second, non-preferred alternative and the status quo were analyzed for comparison to the preferred alternative. 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 slight short-term positive economic impact to the fishing industry due to a slight increase in landings. It is highly probable that this

increase 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.

The second non-preferred alternative would have the same reduction in ex-vessel value that was outlined in 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% (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% contribute a greater or lesser amount to annual fishery landings than an average vessel.

9.0 LITERATURE REFERENCED

Fogarty, M.J. and M. Trollan, NMFS. 2005. Ecology of the Northeast Continental Shelf: Toward and Ecosystem Approach to Fisheries Management. National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

New England Fishery Management Council. 1998. Final Environmental Assessment Incorporating Essential Fish Habitat Into the Fishery Management Plans for NE Multispecies, Atlantic Sea Scallop, Monkfish, Atlantic Salmon, and Atlantic Herring. NEFMC, 50 Water Street, Mill 2, Newburyport, MA 01950.

NOAA Technical Memorandum NMFS-NE-181. Characterization of the Fishing Practices and Marine Benthic Ecosystems of the Northeast U.S. Shelf, and an Evaluation of the Potential Effects of Fishing on Essential Fish Habitat. NOAA Fisheries Service Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543-1026.

NMFS. 2006. Annual Report to Congress on the Status of U.S Fisheries – 2005. U.S. Department of Commerce, NOAA, National Marine Fisheries Service, Silver Spring, MD.

NMFS. 2004. Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan. NOAA Fisheries Service Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

NMFS. 2002. The Deep-sea Red Crab Fishery Management Plan. NOAA Fisheries Service Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

NMFS. 1999. Amendment 8 to the Mackerel, Squid, and Butterfish Fishery Management Plan. NOAA Fisheries Service Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

NMFS. 2005. Amendment 2 to the Monkfish Fishery Management Plan. NOAA Fisheries Service Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

NMFS. 2004. Amendment 13 to the Northeast Multispecies Fishery Management Plan. NOAA Fisheries Service Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

NMFS. 2003. Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. NOAA Fisheries Service Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

NMFS. 2003. Amendment 13 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. NOAA Fisheries Service Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

NMFS. 2001. The Tilefish Fishery Management Plan. NOAA Fisheries Service
Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930.

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