



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
**NORTHEAST REGION**  
One Blackburn Drive  
Gloucester, MA 01930-2298

February 17, 2006

Dear Federal Vessel Permit Holder:

This letter is intended to clarify the existing Northeast Region regulations and policies regarding the implementation of limited access programs. We are receiving numerous inquiries about this issue because the New England and Mid-Atlantic Fishery Management Councils (Councils) are in various stages of considering new limited access programs for the Atlantic herring, Atlantic mackerel, and sea scallop (general category) fisheries. As a result, my office is receiving frequent requests for advice concerning business decisions from individuals interested in one or more of these fisheries.

None of the programs under development by the Councils have yet been submitted for review by the National Marine Fisheries Service (NOAA Fisheries Service). The Mid-Atlantic Council is early in the process of considering limited entry programs for Atlantic mackerel, and the New England Council plans to consider new limited entry provisions for sea scallops (general category) in 2006. The New England Council has adopted measures in Amendment 1 that would establish a limited access program for the Atlantic herring fishery, but has not yet submitted the action to NOAA Fisheries Service for review. The review process for Amendment 1 will take several months and additional public comments will be requested. If the Council holds to its planned submission schedule, a decision to approve or disapprove the measures in Amendment 1 would be expected by fall 2006.

There are five scenarios we have traditionally faced when implementing limited access programs. Each of these is outlined below, along with an explanation of how we have responded when applicants come forward with a particular set of facts. The scenarios below assume that a Council has developed eligibility criteria with two components--a vessel permit component and a landings component. However, several of the limited access programs implemented by the Councils and NOAA Fisheries Service have had no permit requirement (i.e., they relied only on landings criteria), so this may vary from program to program. These scenarios reflect past practices and policy, and may not be applicable to future limited access programs if the Councils recommend, and NOAA Fisheries Service approves, different criteria or standards.

- 1) If the owner of a vessel applies with proof of eligibility (landings and permit) for that vessel, then the vessel would be eligible for a limited access permit.
- 2) If a vessel is sold, with its landings and permit history, to a new owner and the new owner applies with proof of eligibility for that vessel, then the vessel would be eligible for a limited access permit.
- 3) If an individual owns more than one vessel, but only one of those vessels has the landings and permit history required in order to be eligible for the fishery in question, then that individual can replace the vessel that is determined to be eligible with one of his/her other vessels, but may only use the eligibility on one vessel. The original qualifying vessel would establish the size baseline against which future vessel size limitations would be evaluated.



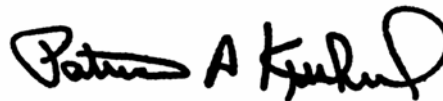
- 4) If a vessel has been sold, and the seller has a purchase and sale agreement signed by both parties to the sale that clearly shows that the seller has retained the landings and permit history and the retained history meets the limited access criteria, then the original owner (seller) could obtain a confirmation of permit history (CPH). The vessel that created the permit and landings history would establish the size baseline against which future vessel size limitations would be evaluated.
- 5) If a vessel that has been sunk or destroyed meets the limited access landings and permit criteria, then the original owner could obtain a CPH. The vessel that created the permit and landings history would establish the size baseline against which future vessel size limitations would be evaluated.

Some vessel owners have asked about the limited entry eligibility criteria adopted for the Atlantic herring fishery by the New England Council in Amendment 1. These criteria have two parts: (1) They would require a vessel owner to demonstrate that a vessel had landings of a specified level during a specific period of time, and (2) they would require a vessel to have been issued an Atlantic herring permit as of November 10, 2005. Be advised that any of the scenarios 1-5 above would require a vessel to meet both criteria to be deemed eligible for the limited entry herring permit

My staff cannot provide advice to industry members concerning transactions that fall outside of the five scenarios we have addressed through our existing policy. For instance, we have received several calls from industry members telling us that they are buying and selling “landings histories,” and requesting advice about the relation of these transactions to future limited access programs. Other owners have asked for open access permits to be transferred from one vessel to another. Both of these requests fall outside of existing policy, and my staff cannot implement such actions. If you contemplate taking actions that are not addressed in the existing programs, you should bring those actions to the attention of the appropriate Council for consideration. Unless new provisions are developed through the Councils, and approved by NOAA Fisheries Service, we will continue to administer the new limited access permit requests consistent with existing policy.

In addition, some vessel owners have sent documents to the Permits Office and requested that they should be added to their vessel permit file. The Permit Office will comply with such requests, but vessel owners should be aware that there is no assurance that such records will be relevant to determining a vessel’s eligibility for any future limited access program.

Sincerely,



Patricia A. Kurkul  
Regional Administrator

Cc: New England Fishery Management Council  
Mid-Atlantic Fishery Management Council