unchanged since 1995. The Council notes that 80 percent of the surf clam harvest is concentrated off the coast of Northern New Jersey. The most recent scientific advice indicates that, while overall that stock could sustain higher harvests, careful consideration must be given to such an increase since harvesting activity is likely to remain focused off Northern New Jersey, where current catches approximately equal stock production. In addition, the Council expressed concern that the 1997 quota was not attained. The proposal to maintain the surf clam quota at the current 1998 level was opposed by some industry representatives who argued that there was adequate biological information to justify an increase in surf clam quota. However, the Council's quota setting policy for surf clams requires consideration of the economic benefits. The Council, in recommending no change from the 1998 quota level for surf clams, relied upon industry comment with respect to those economic benefits. Some argued that a quota increase would encourage corporate consumers to develop new products to utilize surf clams and generate benefits. Others argued against an increase, noting the current quota is not being fully harvested and an additional quota would only create surplus supply.

The Council also recommends an ocean quahog quota of 4.500 million bushels (a 13 percent increase from the 1998 quota of 4.000 million bushels) and no change in the Maine mahogany quahog quota from the 1998 level of 100,000 Maine bushels. Similar to that of surf clams, the most recent scientific information reported higher biomass estimates for ocean quahogs. However, the advice noted that local declines in quahog abundance could occur if the fishery concentrated in areas of high biomass. The 1998 Maine mahogany quahog quota level was implemented in May of this year and is not projected to be harvested. Therefore, because the proposed quota levels do not restrict the harvest levels of these fisheries from their 1998 levels, it is anticipated that this action will not have a significant impact on a substantial number of these small entities engaged in these fisheries. A copy of the RIR is available from the Council (see **ADDRESSES**).

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

Dated: November 6, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30288 Filed 11–6–98; 4:46 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648 and 649

[Docket No. 981026267–8267–01; I.D. 100798B]

RIN 0648–AL36

Fisheries of the Northeastern United States; American Lobster Fishery; Fishery Management Plan (FMP) Amendments to Achieve Regulatory Consistency on Permit Related Provisions for Vessels Issued Limited Access Federal Fishery Permits

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule and request for comments to implement measures contained in Amendment 11 to the Summer Flounder, Scup, and Black Sea Bass FMP; Amendment 7 to the Atlantic Mackerel, Squid, and Butterfish FMP; Amendment 11 to the Atlantic Surf Clam and Ocean Quahog FMP; Amendment 8 to the Atlantic Sea Scallop FMP; Amendment 10 to the Northeast Multispecies FMP; and Amendment 7 to the American Lobster FMP. These amendments would implement regulations to achieve regulatory consistency on vessel permitting for FMPs which have limited access permits issued by the Northeast Region of the NMFS. The proposed regulations are intended to facilitate transactions such as buying, selling, or upgrading commercial fishing vessels issued limited access permits. Consistency on these regulations is especially important for vessels which have limited access permits in more than one fishery in the Northeast Region.

DATES: Public comments must be received on or before December 28, 1998.

ADDRESSES: Comments on this proposed rule should be sent to Jon C. Rittgers, Acting Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Proposed Rule for Permit Consistency.''

Copies of these amendments, the regulatory impact review, and the environmental assessment are available from the Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790, or the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Acting Regional Administrator, Northeast Regional Office, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION: This proposed rule would implement amendments to the Summer Flounder, Scup, and Black Sea Bass FMP; Atlantic Surf Clam and Ocean Quahog FMP; Atlantic Mackerel, Squid, and Butterfish FMP; Atlantic Sea Scallop FMP; Northeast Multispecies FMP; and to the American Lobster FMP.

Summary of Proposed Measures

These proposed amendments would consolidate measures governing permit-associated activities for all Northeast Region FMPs that have limited access permits. None of the proposed measures would apply retroactively. The measures would (1) allow a one-time vessel upgrade/replacement allowance of 10 percent in size (length overall (LOA), gross registered tons (GRT), and net tons (NT)), or 20 percent in horsepower (HP) for all limited access permits except American lobster (an engine HP increase may be performed separately from a vessel size increase); (2) require that the fishing and permit history of a vessel and the replacement vessel be owned by the same person when transferring limited access permits to replacement vessels; (3) allow voluntary replacement of vessels, regardless of vessel condition; (4) require that the fishing and permit history of a vessel transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement between the buyer and seller, or other credible written evidence, verifying that the seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel; (5) set the effective date of the final rule implementing the FMP amendments as the vessel baseline specification date for FMPs without baselines (scup, *Loligo*/butterfish, *Illex*, black sea bass, mahogany quahog); (6) set the effective date of the final rule implementing the FMP amendments as the revised replacement baseline date

and the newly established upgrade baseline date for the summer flounder FMP; (7) authorize the permanent voluntary relinquishment of permit eligibility; (8) implement a restriction on permit splitting; and (9) require a one-time Confirmation of Permit History (CPH) registration and an annual permit renewal. For the American Lobster FMP, the amendments would prohibit permit splitting and require a one-time CPH registration.

Background

Current limited access vessel permit regulations for FMPs in the Northeast Region were developed by the Mid-Atlantic Fishery Management Council (MAFMC) and New England Fishery Management Council (NEFMC) over a period of many years. As a result, the FMPs differ widely on important provisions regarding vessel replacement and upgrade, permit history transfer, permit splitting, and permit renewal. The current regulations are not only inconsistent among FMPs, they are also, in some instances, overly restrictive. This has proven to be confusing and inefficient, especially for the approximately 2,079 vessels which possess more than one limited access Federal fishery permit. Routine business transactions, such as the sale or purchase of a vessel, have become unnecessarily complicated because of these differences. In a worst case situation, four different sets of guidelines would need to be interpreted by both industry and NMFS if a vessel with multispecies, summer flounder, black sea bass, and scup limited access permits was bought, sold, or upgraded.

These proposed measures were developed at the MAFMC Comprehensive Management Committee meeting on February 27, 1998. In March 1998, the MAFMC voted to accept the measures for public hearings. Simultaneously, the Interspecies Committee of the NEFMC approved these measures for public hearing. Due to a lack of Council staff time, NMFS staff prepared a draft environmental assessment (EA) and regulatory impact review (RIR) during May 1998 to facilitate the public hearing process. The MAFMC approved the EA and Public Hearing Document on June 3, 1998. The NEFMC approved the EA and Public Hearing Document on June 24, 1998. Public comments on the draft EA/RIR were accepted from June 24, 1998, to August 5, 1998. Public hearings were conducted in Riverhead, NY (July 20, 1998), Toms River, NJ (July 21, 1998), Norfolk, VA (July 21, 1998), and Peabody, MA (July 30, 1998). The MAFMC reviewed the public hearing comments and voted to approve the amendments for the summer flounder, scup, and black sea bass; Atlantic mackerel, squid, and butterfish; and Atlantic surf clam and ocean quahog FMPs for submission to the Secretary of Commerce (Secretary) on August 20, 1998. The NEFMC voted to approve the amendments for the NE multispecies, Atlantic sea scallops, and American lobster FMPs for submission to the Secretary on September 24, 1998.

The following section describes problems with the existing regulations and explains how the proposed amendments would address these problems.

Vessel Ownership Restrictions

A regulation affecting scup, *Illex*, *Loligo*/butterfish, and mahogany quahog permits currently requires that, when replacing an existing vessel with another vessel and transferring permits, the existing vessel and the replacement vessel must be owned simultaneously by the same person. This has proven to be impractical because most vessel owners must sell their current vessel in order to purchase a replacement vessel. Without these changes vessel owners who must use the proceeds from the sale of one vessel to finance the purchase of another vessel may be unable to procure a replacement vessel.

The proposed amendments would eliminate the requirement that both vessels are owned simultaneously at the time of replacement in these FMPs. The owner of the replacement vessel would only need to possess the fishing and permit history of a limited access vessel to transfer the permit to an otherwise qualified replacement vessel. To facilitate this, the proposed regulations establish procedures to provide a CPH, which would retain a vessel's fishing and permit history. The CPH would remain valid until it is used to issue a permit to an otherwise qualified replacement vessel.

Vessel Replacement Restrictions Based on Vessel Condition

A current provision affecting some Mid-Atlantic permits (scup, *Illex*, *Loligo*/butterfish, and mahogany quahogs) requires that a vessel must sink or be declared unseaworthy by the U.S. Coast Guard before it can be replaced. Under these regulations, a vessel cannot be replaced voluntarily if it is simply old or in disrepair, so an owner may have to keep fishing with the vessel until it burns or sinks. This requirement compromises vessel safety, diminishes an owner's flexibility to replace a vessel at a time when the owner deems appropriate, and prevents owners from taking timely advantage of opportunities to purchase new vessels. Furthermore, this requirement serves no conservation purpose. The proposed amendments would allow for voluntary vessel replacement at a time when an owner chooses for all of the FMPs with limited access permits.

Differences in Permit History Transfer Regulations Among FMPs

The regulations governing permit history transfers would be amended to be consistent among FMPs. Under current black sea bass, multispecies, Atlantic sea scallop, and American lobster regulations, fishing and permit history may be separated from a hull when a vessel is sold, if there is a written agreement between the buyer and the seller. However, under the summer flounder, scup, *Illex*, *Loligo*/butterfish, and mahogany quahog requirements, permit eligibility always transfers with the vessel if it is sold. This inconsistency regarding how permit histories are transferred is important because it affects the manner in which people can enter or retain access to limited access fisheries. The proposed amendments would allow the fishing and permit history of a vessel to be retained by a seller (with written agreement from the buyer) for all limited access permits. As a result, the fishing industry will gain more flexibility when buying and selling vessels.

Differences Among FMPs in Vessel Replacement and Upgrading Existing Vessels

Current regulations prohibit increasing the size and HP of a replacement vessel at the time of replacement for vessels with black sea bass, scup, *Illex*, *Loligo*/butterfish, or mahogany quahog limited access permits. These regulations, however, do allow for an existing vessel to have length added and a larger, more powerful engine installed. This confounds measures to control effort and capitalization in these fisheries, over the long term.

The summer flounder, multispecies, and Atlantic sea scallop regulations allow, for vessel replacement purposes, a one-time HP increase that may not exceed 20 percent of the HP of the vessel replaced and a one-time increase of up to 10 percent in each of the specifications for vessel size (length, GRT, and NT), all of which must be performed at the same time. A vessel size upgrade may be performed separately from an engine HP upgrade.

The proposed amendments would allow a one-time upgrade or

replacement allowance of 10 percent in each of the specifications for vessel size (GRT, NT, and length) and a 20 percent increase in HP for all FMPs with existing replacement or upgrade restrictions (excluding the American lobster FMP). The proposed amendments would (1) establish vessel baseline specification dates for FMPs without baselines (scup, *Loligo*/butterfish, *Illex*, black sea bass, mahogany quahog); (2) establish an upgrade baseline specification date for the summer flounder FMP; and (3) revise the summer flounder FMP replacement baseline specification date. These baseline specification dates will be the effective date of the final rule.

Differences on Permit Splitting and Permit History Transfer Among FMPs

The multispecies FMP does not allow a multispecies permit to be issued to a vessel if its fishing or permit history has been used to qualify the vessel for another limited access Federal fishery. This ''permit-splitting'' prohibition was intended to prevent an increase in fishing effort and capitalization. The problem is that only the multispecies FMP has the ''no-splitting'' provision. Because of this, a multispecies permit could be revoked for circumstances that are not in that permit holder's control. This could occur when a vessel with both multispecies and scup, or certain other permits, is sold. The seller could retain the multispecies permit and transfer it to another vessel. The buyer would still be eligible for the scup permit because it transfers with the vessel under current scup regulations and the regulations in other FMPs. However, due to the prohibition on permit-splitting in multispecies, if the scup permit is issued, the multispecies permit would have to be canceled.

The proposed regulations would prohibit permit splitting in all FMPs. This has the effect of keeping all ''permit packages'' intact. The adoption of this rule and all of its proposed measures allowing for voluntary vessel replacement and for the retention in writing of limited access permits, makes it necessary that NMFS adopt a prohibition against permit splitting in all FMPs with limited access permits. Otherwise, through the use of permit splitting, overall fleet capacity may increase, thereby negating the benefits gained from other management measures. The proposed amendments would also avoid the situation described above where a permit has to be canceled for reasons that are beyond a permit holder's control.

Voluntary Relinquishment of Permit Eligibility

There are situations where it is advantageous or desirable for a vessel owner to relinquish a permit voluntarily. For example, if frequent reporting is required; or if it is necessary to choose between different baselines; or if it is possible to take advantage of the unrestricted vessel upgrade allowance in the lobster fishery. The proposed amendments allow for the voluntary permanent relinquishment of permit eligibility allowing more flexibility to limited access permit holders.

Technical Changes

Amendment 2 to the summer flounder FMP established the vessel permit moratorium, which was initially to expire after 1997. Amendment 10 to the summer flounder FMP extended the moratorium indefinitely (62 FR 63872, December 3, 1997), but § 648.4(a)(3)(i) was not revised as necessary. This inadvertent omission is being corrected in this rulemaking.

Classification

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

This proposed rule has been determined to be significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

NMFS' standards for criteria to determine if a regulatory action is significant include: (1) a decrease in annual gross revenues of more than 5 percent for 20 percent or more of the affected small entities; (2) an increase in total costs of production of more than 5 percent as a result of an increase in compliance costs for 20 percent or more of the affected small entities; (3) compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities for 20 percent or more of the affected small entities; (4) capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or (5) 2 percent of the small business entities affected being forced to cease business operations.

A substantial number of entities may be directly or indirectly impacted by this proposed action because all of the vessels (4,430) in these fisheries are small entities and hold at least one limited access moratorium permit in the Northeast Region. However, this proposed rule would not have a significant economic impact because, if adopted, it would not result in a decrease in gross revenues, result in significant compliance costs, or cause businesses to cease operations. Many of these small entities currently operate under existing restrictions affecting vessel replacement, vessel upgrade, permit transfers, and permit renewals that are more restrictive and more complicated than the measures contained in this proposed rule.

Current restrictions governing these activities differ for each vessel, depending upon the unique combination of permits which the vessel possesses. There are currently four different sets of regulations. This creates confusion and is inefficient when attempting to sell, modify, or replace a fishing vessel. This proposed amendment would reduce the number of sets of guidelines from four to one, and these proposed guidelines are already applicable in the multispecies and Atlantic sea scallop fisheries.

The proposed action would not result in a decrease in annual gross revenues of more than 5 percent for 20 percent or more of the affected small entities because the new requirements are generally more lenient and less complicated than the existing array of regulations governing permit-related activities. In addition, these requirements do not impose compliance costs, such as gear purchases or direct restrictions on fishing activities. If and when a vessel owner chooses to buy, sell, upgrade, or replace a vessel then the regulations would affect them. However, these actions would still be permissible and, with the exception of upgrades in some fisheries, the regulations would be more lenient. Because the proposed restriction on vessel upgrades is difficult to quantify, NMFS is seeking comments to establish any potential impacts that the restriction may create. Costs of production and capital costs of compliance will not increase because the regulations do not impose immediate compliance requirements.

Because this action, if adopted, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been submitted to OMB for approval. Vessel owners intending to replace vessels, upgrade vessels, or obtain a CPH are required to complete an application form. The estimated average response time is 3 hours for applicants requesting replacements of vessels permitted for Mid-Atlantic fisheries. For applicants requesting a history retention, the estimated average response time is one- half hour per response. For applicants requesting vessel specification upgrades, the estimated average response time is 3 hours. For applicants requesting replacements of undocumented vessels, the estimated average response time is 3 hours.

This proposed rule also contains two collection-of-information requirements previously approved under OMB control number 0648–0202. The response time for a multispecies permit holder to request a change in permit category is 5 minutes. The response time for a multispecies permit holder to request a permit appeal in writing is 3 minutes. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

List of Subjects

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 649

Fisheries.

Dated: November 6, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 648 and 649 are proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. Section 648.4 is amended by removing paragraph (a)(5)(ii); redesignating existing paragraphs (a)(5)(iii), (a)(5)(iv), and (a)(5)(v) as paragraphs (a)(5)(ii), (a)(5)(iii), and (a)(5)(iv) respectively; revising paragraphs (a)(1)(i)(A) through (a)(1)(i)(C), (a)(1)(i)(E), (a)(1)(i)(F), (a)(1)(i)(H), (a)(1)(i)(I)(*2*), (a)(1)(i)(J) through (a)(1)(i)(L), (a)(2)(i)(B), (a)(2)(i)(H), (a)(3)(i) heading, (a)(3)(i)(B), (a)(3)(i)(C), (a)(4)(i), (a)(5)(i), (a)(6)(i), (a)(7)(i); and adding paragraphs (a)(1)(i)(M), (a)(2)(i)(L), (a)(2)(i)(M), (a)(3)(i)(D) through (a)(3)(i)(H), and (a)(3)(i)(J) through (a)(3)(i)(L) to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(1) * * *

(i) * * *

(A) *Eligibility*. To be eligible to apply for a limited access multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access multispecies permit for the preceding year, or be replacing a vessel that was issued a limited access multispecies permit for the preceding year.

(B) *Application/renewal restrictions*. All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in (a)(1)(i)(J) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(C) *Qualification restriction*. Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a limited access permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Administrator will determine who is entitled to qualify for the permit and any DAS allocation according to paragraph (a)(1)(i)(D) of this section.

* * * * *

(E) *Replacement vessels*. To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(F) *Upgraded vessel*. A vessel may be upgraded, whether through refitting or replacement, and still be eligible for or be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(*1*) The vessels's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The vessel's length, GRT, and NT may be increased, whether through refitting or replacement, only once. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

* * * * *

(H) *Vessel baseline specifications*. The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(I) * * *

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category unless they are otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section.

For 1997 and beyond, the owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon his/her application for a permit no later than 30 days prior to the last day of the fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of issuance of the vessel's permit. After 45 days have expired, the vessel must remain in that permit category for the duration of the fishing year.

* * * * *

(J) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(E) of this section.

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

(L) *Restriction on permit splitting.* A limited access permit issued pursuant to this section may not be issued to a vessel or its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Appeal of denial of permit*—(*1*) *Eligibility.* Any applicant eligible to apply for a limited access multispecies permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(*i*) The information used by the Regional Administrator was based on mistaken or incorrect data.

(*ii*) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(*iii*) The applicant has new or additional information.

(*2*) *Appeal review.* The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access multispecies permit may fish under the limited access multispecies category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

* * * * *

(2) * * *

(i) * * *

(B) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

* * * * *

(H) *Vessel baseline specifications.* See paragraph (a)(1)(i)(H) of this section.

* * * * *

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Percentage ownership restrictions.* (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of all limited access scallop vessels at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit, or were issued or renewed a limited access scallop permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(2)(i)(M)(*1*) of this section, are eligible to renew such permits(s), regardless of whether the renewal of the permits will result in the 5– percent ownership restriction being exceeded.

(*3*) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

* * * * *

(3) * * *

(i) *Moratorium permits.*

* * * * *

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel as of [*insert effective date of final rule in the FEDERAL REGISTER*].

(I) [Reserved]

(J) Confirmation of permit history. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

* * * * *

(4) * * *

(i) *Maine mahogany quahog permit.* (A) A vessel is eligible for a Maine mahogany quahog permit to fish for ocean quahogs in the Maine mahogany quahog zone if it meets the following eligibility criteria, and an application for a Maine mahogany quahog permit is submitted by May 19, 1999:

(*1*) The vessel was issued a Federal Maine Mahogany Quahog Experimental Permit during one of the experimental fisheries authorized by the Regional Administrator between September 30, 1990, and September 30, 1997; and,

(*2*) The vessel landed at least one Maine bushel of ocean quahogs from the Maine mahogany quahog zone as documented by fishing or shellfish logs submitted to the Regional Administrator prior to January 1, 1998.

(B) Application/renewal restriction. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of denial of a permit.* (*1*) Any applicant denied a Maine mahogany quahog permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator's designee erred in concluding that the vessel did not meet the criteria in paragraph (a)(4)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator's designee was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator.

(*3*) The hearing officer shall make a recommendation to the Regional Administrator.

(*4*) The Regional Administrator will make a final decision based on the criteria in paragraph (a)(4)(i)(A) of this section and on the available record, including any relevant documentation submitted by the applicant and, if a hearing is held, the recommendation of the hearing officer. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(ii) [Reserved]

(5) * * *

(i) *Loligo squid/butterfish and Illex squid moratorium permits.* (*Illex* squid moratorium is applicable from July 1, 1997, until July 1, 2002). (A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain *Loligo* squid, butterfish, or *Illex* squid in excess of the incidental catch allowance in paragraph (a)(5)(ii) of this section in the EEZ, a vessel must have been issued a *Loligo* squid and butterfish moratorium permit or *Illex* squid moratorium permit, as applicable, in a previous year or be replacing a vessel that was issued a moratorium permit for a previous year.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

* * * * *

(6) * * *

(i) *Moratorium permit*--(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain scup, a vessel must have been issued a scup moratorium permit in a previous year or be replacing a vessel that was issued a scup moratorium permit for a previous year.

(B) Application/renewal restriction. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) Restriction on permit splitting. See paragraph (a)(1)(i)(L) of this section.

* * * * *

(7) * * *

(i) *Moratorium permits*—(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain black sea bass in excess of the possession limit established pursuant to § 648.145 in the EEZ north of 35°15.3' N. Lat., the latitude of Cape Hatteras Light, NC, a vessel must have been issued a black sea bass moratorium permit in a previous year or be replacing a vessel that was issued a black sea bass moratorium permit for a previous year.

(B) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) Restriction on permit splitting. See paragraph (a)(1)(i)(L) of this section.

* * * * *

3. Section 648.14 is amended by adding paragraphs (a)(114) and (a)(115) to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(114) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(115) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

* * * * *

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. Section 649.4 is amended by revising paragraph (b)(2)(i) and adding paragraphs (b)(3)(iii), (b)(3)(iv), and (b)(3)(v) to read as follows:

§ 649.4 Vessel permits.

* * * * *

(b) * * *

(2) * * *

(i) To be eligible to renew or apply for a limited access lobster permit, a vessel or permit applicant must have been issued either a limited access lobster permit for the preceding year or a confirmation of permit history (CPH), or a vessel must be replacing a valid limited access American lobster permit from the preceding year or permit history confirmation. If more than one applicant claims eligibility to apply for a limited access American lobster permit based on one fishing and permit history, the Regional Administrator shall determine who is entitled to qualify for the limited access permit or permit history confirmation.

* * * * *

(3) * * *

(iii) *Restriction on permit splitting.* A limited access American lobster permit may not be issued to a vessel or its replacement, or remain valid, if a vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(iv) *Consolidation restriction.* Limited access permits may not be combined or consolidated.

(v) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (q) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Information requirements for the CPH application are the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b)(1)(i)(D) of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981016290–8260–01; I.D. 090998B]

RIN 0648–AL20

Fisheries of the Exclusive Economic Zone Off Alaska; Vessel Moratorium Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 59 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendment 57 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 9 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area submitted by the North Pacific Fishery Management Council (Council). These amendments would extend the Vessel Moratorium Program (VMP) authorized under the aforementioned FMPs from January 1, 1999, through December 31, 1999, with one change. The one change would be that after December 31, 1998, no person could apply for a new moratorium permit unless the application is based on a moratorium qualification that was used as the basis for issuing a moratorium permit on or before December 31, 1998. Extension of the VMP from January 1, 1999, through December 31, 1999, would prevent a one-year hiatus between the current expiration of the VMP on December 31, 1998, and the start of fishing under the License Limitation Program (LLP) on January 1, 2000.

DATES: Comments on this proposed rule must be received by *December 14, 1998. NMFS invited comments on the amendments themselves through November 17, 1998 (63 FR 49892).*