

Dated: May 11, 2015.

Gina McCarthy,
Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BB40

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Omnibus Amendment To Simplify Vessel Baselines

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic and New England Fishery Management Councils have submitted an Omnibus Amendment to the Fishery Management Plans of the Northeastern United States to simplify vessel baselines. This amendment incorporates a draft Environmental Assessment and preliminary Regulatory Impact Review, for review and approval by the Secretary of Commerce, and NMFS is requesting comments from the public. The Omnibus Amendment to Simplify Vessel Baselines would eliminate the one-time limit on vessel upgrades and remove gross and net tonnages from vessel baseline specifications considered when determining a vessel's baseline for replacement purposes. Implementing these measures would reduce the administrative burden to permit holders and NMFS, and would have little effect on fleet capacity. This action would also remove the requirement for vessels to send in negative fishing reports (*i.e.*, "did not fish" reports) during months or weeks when fishing did not occur.

DATES: Comments must be received on or before July 17, 2015.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2011-0213, by any one of the following methods.

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#!/docketDetail;D=NOAA-NMFS-2011-0213,

2. Click the "Comment Now!" icon, complete the required fields

3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the Omnibus Amendment to Simplify Vessel Baselines, and of the draft Environmental Assessment and preliminary Regulatory Impact Review (EA/RIR), are available from the Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930 The EA/RIR is also accessible via the Internet at: www.greateratlantic.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978-281-9233.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any Fishery Management Plan (FMP) amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC) approved this Baseline Amendment, which would simplify vessel baseline requirements, at their November 18, 2014, and October 8, 2014, meetings, respectively. NMFS prepared the amendment on behalf of the Councils and declared a transmittal date May 12, 2015. Both Councils have reviewed the Baseline Amendment proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the MSA. If approved by NMFS, this amendment would simplify the specifications considered when determining a vessel's baseline for

replacement purposes developed by the MAFMC and NEFMC.

Background

The MAFMC developed the first limited entry program in 1977 for the surfclam/quahog fishery, which included restrictions on replacement vessels. This program required that a replacement vessel be of "substantially similar capacity" in an effort to maintain and not increase the harvest capacity of the fleet at that time. Over the following two decades, the MAFMC and NEFMC implemented additional limited entry programs. By 1998, there were four different sets of vessel upgrade and replacement restrictions among the various FMPs. The upgrade restrictions became confusing for fishing industry members with more than one limited access permit, because each permit had the potential to have different vessel upgrade regulations apply. In addition, some vessels added limited access permits to their vessel that originally qualified on another vessel that was a different size and/or horsepower. This results in a vessel having multiple baselines. Thus, in 1999, the MAFMC and NEFMC, in consultation with NMFS, developed an amendment to Achieve Regulatory Consistency on Permit Related Provisions for Vessels Issued Limited Access Federal Fishery Permits (64 FR 8263, February 19, 1999) (Consistency Amendment) to streamline and make consistent baseline provisions and upgrade restrictions across FMPs.

The Consistency Amendment standardized definitions and restrictions for vessel baselines, upgrades, and replacements across all limited access fisheries. It simplified regulations for vessel replacements, permit transfers, and vessel upgrades, making them consistent and less restrictive in order to facilitate business transactions. Although the Consistency Amendment did standardize the vessel baseline requirements for the fisheries of the northeast, some burdensome requirements remain. Under current restrictions, a vessel baseline is defined by vessel length overall, gross tonnage, net tonnage, and horsepower. We determine the baseline for a limited access permit based on the size (length, gross tonnage, and net tonnage) and horsepower of the first vessel issued a limited access permit for that fishery or, for fisheries that adopted baseline restrictions through the Consistency Amendment, the permitted vessel at the time the final rule became effective.

Current baseline regulations require that a replacement vessel or an upgrade made to an existing vessel with a

limited access permit be within 10 percent of the size and 20 percent of the horsepower of the permit's baseline vessel. To respect the NEFMC and the MAFMC's intended baseline restrictions of individual fisheries, for vessels with multiple baselines, we use the most restrictive of the baselines to judge the approval of a replacement vessel or upgrade, unless the permit holder chooses to relinquish the more restrictive permit. In addition, current baseline regulations limit permit holders to a one-time upgrade of the vessel size and horsepower specifications. For example, we limit a vessel owner that has a 60-ft (18.3-m) baseline length to upgrading to a vessel of up to 66 ft (20.1 m). However, if he moves his permit to a 62-ft (18.9-m) vessel for any reason, it would constitute his one-time size upgrade and he would lose the ability to later upgrade to a vessel of 66 ft (20.1 m). He would only be able to move his permit to a vessel of 62 ft (18.9 m) or less. Because he used his one-time size upgrade, he would not be able upgrade the vessel's tonnages. He would still be able to use his horsepower upgrade to upgrade his horsepower by 20 percent, but only once.

The Baseline Amendment would:

1. Eliminate gross and net tonnage from the baseline specifications considered when determining a vessel's baseline for replacement purposes. Both the Councils and NMFS consider tonnages the most variable of vessel baseline specifications and, therefore, they have little effect on limiting vessel capacity when compared to length and horsepower restrictions. There is more than one acceptable method of determining tonnages, and the tonnages of a vessel can vary significantly depending on whether an exact measurement or simplified calculation is used. In addition, vessel owners can circumvent net tonnage limits by modifying internal bulkheads. Eliminating tonnages would simplify the vessel baseline verification and replacement process. In addition, it could reduce the cost burden on the

industry if they only need horsepower verification because this would eliminate the need for a marine survey prior to any permit transactions.

2. Remove the one-time limit on vessel upgrades. Eliminating the one-time upgrade limit would provide more flexibility for vessel owners in the selection of replacement vessels and upgrades to existing vessels. Some vessel owners have been constrained by the one-time limit because they or a previous owner did not maximize the one-time upgrade with a previous vessel replacement, due to cost or availability or for other reasons, and have since been unable to further upgrade the vessel. Eliminating the one-time limit would also simplify the baseline verification and vessel replacement process for vessel owners and NMFS by eliminating the need to research and document whether a vessel owner used the one-time upgrade during the vessel's entire limited access history.

This rule proposes to remove the requirement for vessels to send in negative fishing reports (*i.e.*, "did not fish" reports) during months or weeks when fishing did not occur. This was not part of the Baseline Amendment, but is the result of an internal review of the trip-level reporting requirements conducted by the joint Greater Atlantic Regional Fisheries Office-Northeast Fisheries Science Center Fishery Dependent Data Committee (FDCC) during the past year. The division of the Office of Management and Budget (OMB) responsible for the Paperwork Reduction Act (PRA), in the interest of reducing compliance costs for small businesses, noted a potential cost savings for fishermen if we remove the DNF report and asked that we investigate the possibility of removing it. As a result of that review, the FDCC has recommended that the negative fishing reports are no longer necessary because the ability to determine if a vessel has engaged in fishing activity and submitted required trip reports has increased in recent years due to improved trip-level data matching and the expansion of other monitoring

systems (*e.g.*, Vessel Monitoring Systems). Therefore, in order to simplify the regulations and reduce reporting burdens for the industry, we are proposing to eliminate the requirement in this action under the Secretary's authority at section 305(d) of the Magnuson-Stevens Act. Vessel owners would still be required to report all fishing trip activity on a monthly or weekly basis, depending on the requirements associated with their vessel permits.

We are soliciting public comments on the Baseline Amendment and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement the revised Baseline Amendment will be published in the **Federal Register** for additional public comment. NMFS will evaluate the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of the Baseline Amendment to be considered in the approval/disapproval decision on the amendment. All comments received by July 17, 2015, whether specifically directed to the Baseline Amendment or the proposed rule will be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period. Comments received after that date will not be considered in the decision to approve or disapprove the revised Baseline Amendment, including those postmarked or otherwise transmitted by the last day of the comment period.

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

Dated: May 12, 2015.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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