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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No: 110907562-5681-03]

**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:** Final rule.

**SUMMARY:** This final rule announces the approval of the Omnibus Amendment to the Fishery Management Plans of the Northeastern United States and implements the amendment's approved management measures to simplify vessel baselines. The Baseline Amendment eliminates the one-time limit on vessel upgrades and removes gross and net tonnages from the vessel baseline specifications that NMFS considers when determining a vessel's baseline for replacement purposes. Implementing these measures reduces the administrative burden to permit holders and NMFS and has little effect on fleet capacity.

This rule also removes the requirement for vessels to send in negative fishing reports (i.e., “did not fish” reports) during months or weeks when vessels were inactive. NMFS no longer needs these reports due to improved trip-level matching. Therefore, NMFS removes this requirement to simplify the regulations and reduce reporting burdens for the industry.

**DATES:** Effective [*insert date of publication in the **Federal Register***].

**ADDRESSES:** NMFS developed an environmental assessment (EA) for this action that describes the action and other considered alternatives and provides a thorough analysis of the impacts of these measures. Copies of the Amendment, the EA, and the small entity compliance guide are available upon request from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930-2298, or available on the Internet at :

*[http://www.greateratlantic.fisheries.noaa.gov/mediacenter/ongoing/omnibus\\_amendment\\_to\\_simplify\\_vessel\\_baselines.html](http://www.greateratlantic.fisheries.noaa.gov/mediacenter/ongoing/omnibus_amendment_to_simplify_vessel_baselines.html)*

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The New England and Mid-Atlantic Fishery Management Councils submitted the Baseline Amendment to NMFS for approval at their November 18, 2014, and October 8, 2014, meetings, respectively. We prepared the amendment on behalf of the Councils. We reviewed and finalized the amendment document to ensure consistency with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act),

the fishery management plans that have vessel baseline requirements, and other applicable laws. NMFS has approved the Baseline Amendment in its entirety.

Baseline regulations currently 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 (i.e., length, gross tonnage, and net tonnage) and 20 percent of the horsepower of the permit's baseline vessel. In addition, regulations limit permit holders to a one-time upgrade of the vessel size and horsepower specifications.

This final rule eliminates gross and net tonnage from the baseline specifications that NMFS considers 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. Eliminating tonnages simplifies the vessel baseline verification and replacement process. In addition, it could reduce the cost burden on the industry if vessel owners only need horsepower verification because eliminating the tonnage baselines will eliminate the need for owners to get a marine survey of their vessel prior to any permit replacement or upgrade transactions.

This final rule removes the one-time limit on vessel upgrades. Eliminating the one-time upgrade limit will provide more flexibility for vessel owners in the selection of replacement vessels and upgrades to existing vessels. Eliminating the one-time limit will 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.

The Baseline Amendment implemented by this final rule does not modify any other baseline specifications or measures.

This final rule also removes the requirement for vessels to send in negative fishing reports (i.e., “did not fish” reports) during months or weeks when vessels are inactive. This change in reporting requirements was not part of the Baseline Amendment. We are removing this requirement under the Secretary’s authority at section 305(d) of the Magnuson-Stevens Act to promulgate regulations necessary to carry out Councils’ amendments consistently with the Act. Eliminating this requirement simplifies the regulations and reduces reporting burdens for the industry. In the past, these negative fishing reports were necessary to aid in data matching and quota monitoring. In recent years, we updated our monitoring systems at the Greater Atlantic Regional Fisheries Office and these negative fishing reports are no longer necessary. Vessels that fish will still be required to report all trips on a monthly or weekly basis, depending on permits that they retain.

### **Comments and Responses**

NMFS received two comment letters in response to the proposed rule from the Atlantic Offshore Lobstermen’s Association and Lund’s Fisheries Incorporated. We provide responses below to the issues these commenters raised. NMFS may only approve, disapprove, or partially approve measures in the Baseline Amendment, and cannot substantively amend, add, or delete measures beyond what is necessary under section 305(d) of the Magnuson-Stevens Act to discharge its responsibility to carry out such measures.

*Comment 1:* Atlantic Offshore Lobstermen’s Association was supportive of this action, but it was concerned that the changes in the Baseline Amendment could encourage additional requests to liberalize the vessel upgrading/replacement regulations. It strongly opposes any further liberalization of vessel baseline requirements because it believes it would result in a large increase in fleet capacity, which would have negative impacts on a number of offshore fisheries.

*Response:* This action is limited in scope and will not increase the capacity of the fleet. Any changes that would affect fleet capacity must go through both the MAFMC and the NEFMC. NMFS encourages the Atlantic Offshore Lobstermen’s Association and all other interested parties to participate in the Council process should the Councils consider any future changes to vessel baseline and capacity issues.

*Comment 2:* Lund’s Fisheries Incorporated supported the amendment, but it asked that we clarify that the baseline specification for fish hold capacity remains in place.

*Response:* Currently, Tier 1 or Tier 2 limited access mackerel permits have an additional baseline specification for fish hold capacity. This rule does not remove fish hold capacity from the Tier 1 or Tier 2 limited access mackerel baseline specifications.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act and other applicable law.

The Office of Management and Budget (OMB) has determined that this rule is not significant according to Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none has been prepared.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The request to remove the collection burden for vessel gross and net tonnages, vessel upgrades, and did not fish report requirements were approved by OMB under the NMFS Greater Atlantic Region Family of Forms (OMB Control No. 0648-0202 and 0648-0212).

Removing tonnages from vessel baselines may simplify or eliminate the need for a permit holder to hire a naval architect to determine and document tonnage if it was not previously established. NMFS estimates the resulting average cost savings of as much as \$375 per survey. Removing tonnages and upgrades may negate the need for a permit holder to hire a third party to research the permit’s history and prepare the replacement application. Estimates of the costs for these third party services were not available, but NMFS estimates that permit holders spend an average of 3 hours, or \$270 in labor costs, preparing vessel replacement applications.

In 2014, NMFS received 92 vessel replacement requests for permits that had baseline requirements for a total cost of \$25,875 and 279 burden hours. We estimate that

the removal of GRT and NT and the one-time upgrade will reduce the need for surveys and the time involved in preparing a vessel replacement application. We estimate that this change will reduce the cost burden on the industry by \$12,750 and 139 burden hours per year for a total of \$13,125 and 140 burden hours.

Vessels are no longer required to send in negative fishing reports (i.e., “did not fish” reports) during months or weeks when fishing did not occur. Vessel owners are still required to report all fishing trip activity on a monthly or weekly basis, depending on the requirements associated with their vessel permits. The collection of negative fishing reports is no longer needed to determine if a vessel has engaged in fishing activity and submitted required trip reports due to improved trip-level data matching and the expansion of other monitoring systems (e.g., Vessel Monitoring Systems).

The relief of burden estimates for removing this requirement applies to all federally permitted vessels. In 2014, NMFS received approximately 78,294 did not fish reports. We estimated public reporting burden for submitting these reports to average 2 min per response with an associated cost of \$0.45. Therefore, the removal of 78,294 did not fish reports reduces total compliance costs by \$35,232, and reduce reporting burden by 2,609 hr annually.

The Assistant Administrator for Fisheries has determined that because this rule is relieving restrictions, there is good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness and to make the Baseline Amendment final measures upon publication in the **Federal Register**.

This rule relieves restrictions by removing gross tonnage and net tonnage from vessel baseline specifications, removing the one-time baseline size and horsepower

upgrade restriction, and removing the requirement for vessels to send in negative fishing reports. Removing gross tonnage and net tonnage from vessel baseline specifications and removing the one-time baseline size and horsepower upgrade restrictions will provide vessel owners the opportunity to replace their vessels on a larger number of compatible vessels. This will give vessel owners more flexibility while not increasing the capacity of the fleet. Removing the requirement to send in negative fishing reports will eliminate the burden of sending in weekly or monthly reports for non-active vessels. Vessel owners will be able to take advantage of these changes immediately upon publication and will not have to wait for the regulations to become effective to finalize vessel sales or upgrades that they may have been looking into during the final development of this action and the proposed rule.

This rule should be implemented quickly because it relieves these restrictions and does not add any measures that require preparation. Immediately upon its implementation it will increase flexibility for the fleet and reduce industry and Federal cost/time burdens for vessel specification verifications, vessel replacement, vessel upgrades, and VTR processing/reporting.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: August 21, 2015

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is 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.*

**§ 648.2 [Amended]**

2. In § 648.2, remove the definition of “Substantially similar harvesting capacity.”

3. In § 648.4, revise paragraphs (a)(1)(i)(E)(1), (a)(1)(i)(E)(2), (a)(1)(i)(F)(1), (a)(1)(i)(F)(2), (a)(1)(i)(H), (a)(3)(i)(H), (a)(13)(i)(E)(1), (a)(13)(i)(F), and (a)(13)(i)(H) to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(E) \* \* \*

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

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

(F) \* \* \*

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

(2) The upgraded vessel's length overall may not exceed the vessel's baseline length overall by more than 10 percent, as applicable.

\* \* \* \* \*

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

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, horsepower) of the vessel as of March 22, 1999, unless the vessel is in the process of construction or riggering or under agreement or written contract for construction or riggering, as of the effective baseline specification date in which case the baseline specifications will be established no later than February 19, 2000.

\* \* \* \* \*

(13) \* \* \*

(i) \* \* \*

(E) \* \* \*

(I) To be eligible for a limited access permit under this section, the replacement vessel's length overall may not exceed the vessel's baseline length overall by more than 10 percent. The replacement vessel must also meet any other applicable criteria under paragraph (a)(13)(i)(F) of this section.

\* \* \* \* \*

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, provided that the new length overall of the upgraded vessel does exceed the vessel's baseline length overall by more than 10 percent, as applicable.

\* \* \* \* \*

(H) *Vessel baseline length.* The vessel baseline length in this section is the overall length of the vessel indicated on the vessel's initial limited access permit as of the date the initial vessel applies for such permit.

\* \* \* \* \*

4. In § 648.7, revise paragraphs (b)(1)(i) and (f)(2)(i) to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing

by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, “small” (i.e., less than 23 inches (58.42 cm), total length) or “large” (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(i) For any vessel not issued a NE multispecies; Atlantic herring permit; or any Atlantic mackerel, longfin squid, Illex squid, or butterfish permit; fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. For any vessel issued a NE multispecies permit; Atlantic herring permit; or any Atlantic mackerel, longfin squid,

Illex squid, or butterfish permit; fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month the VTR must be submitted to NMFS, as appropriate.

\* \* \* \* \*

5. In § 648.14, revise paragraphs (b)(4) and (k)(2)(i) to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(i) Fish for, possess, or land NE multispecies with or from a vessel that has had the length overall of such vessel, or its replacement, increased or upgraded in excess of limitations specified in § 648.4(a)(1)(i)(E) and (F).

\* \* \* \* \*

6. In § 648.82, revise paragraphs (l)(1)(ii) and (l)(1)(iii) to read as follows:

**§ 648.82 Effort-control program for NE multispecies limited access vessels.**

\* \* \* \* \*

(1) \* \* \*

(1) \* \* \*

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or the vessel owner could choose to adopt the larger baseline of the two vessels provided such an upgrade is consistent with provisions of this paragraph (l)(1)(ii). A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) of this section is subject to the restrictions of paragraph (k)(4)(xi)(C) of this section.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits exist, i.e., those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

\* \* \* \* \*

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