

of a State or Tribal operating permits program under part 70 of this chapter. \* \* \*

\* \* \* \* \*

5. Section 71.8 is amended by revising of paragraph (a) and revising paragraph (d) to read as follows:

**§ 71.8 Affected State review.**

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or within Indian country, the permitting authority shall provide notice of each draft permit to any affected State, as defined in § 71.2 on or before the time that the permitting authority provides this notice to the public pursuant to § 71.7 or § 71.11(d) except to the extent § 71.7(e)(1) or (2) requires the timing of the notice to be different.

\* \* \* \* \*

(d) *Notice provided to Indian Tribes.* The permitting authority shall provide notice of each draft permit to any federally recognized Indian Tribe:

(1) Whose air quality may be affected by the permitting action and is in an area contiguous to the jurisdiction in which the part 71 permit is proposed; or

(2) Is within 50 miles of the permitted source.

\* \* \* \* \*

6. Section 71.9 is amended by adding paragraph (p) to read as follows:

**§ 71.9 Permit fees.**

\* \* \* \* \*

(p) The permitting authority may reduce any fee required under paragraph (c) of this section for sources that are located in areas for which EPA believes the Indian country status is in question and that have paid permit fees to a State or local permitting authority that has asserted CAA regulatory authority over such areas under color of an EPA-approved part 70 program. Upon application by the source, the part 71 fee may be reduced up to an amount that equals the difference between the fee required under paragraph (c) and the fee paid to a State or local permitting authority. The fee reduction will cease if the area in which the source is located is later determined to be Indian country.

7. Section 71.11 is amended by adding paragraph (l)(7) to read as follows:

**§ 71.11 Administrative record, public participation, and administrative review.**

\* \* \* \* \*

(l) \* \* \*

(7) Notice of any final agency action regarding a Federal operating permit

shall promptly be published in the **Federal Register**.

\* \* \* \* \*

[FR Doc. 99-3659 Filed 2-18-99; 8:45 am]

BILLING CODE 6560-50-U

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 648 and 649**

[Docket No. 981026267-9013-02; 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:** Final rule.

**SUMMARY:** NMFS issues this final rule 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 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 regulations are intended to facilitate transactions such as buying, selling, replacing or upgrading commercial fishing vessels issued limited access permits. Consistency among these regulations is especially important for vessels which have limited access permits in more than one fishery in the Northeast Region.

**DATES:** All measures are effective on March 22, 1999.

**ADDRESSES:** 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 on the burden hour estimates for collection-of-information requirements contained in this rule should be sent to Jon Rittgers, Acting Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Attention: NOAA Desk Officer, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

Richard A. Pearson, Fishery Policy Analyst, 978-281-9279.

**SUPPLEMENTARY INFORMATION:**

**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 vessel owners, whose vessels 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.

A notice of availability for these amendments was published in the **Federal Register** on October 15, 1998 (63 FR 55357), and the proposed rule to implement the amendments was published on November 13, 1998 (63 FR 63436). The notice of availability solicited public comments through December 14, 1998. The proposed rule solicited public comments through December 28, 1998.

The proposed amendments contained a number of changes to the summer flounder, scup, black sea bass, mahogany quahog, *Loligo*/butterfish, *Illex* squid, northeast multispecies, Atlantic sea scallop, and American lobster FMPs. Details concerning the development and necessity of these

amendments were provided in the notice of proposed rulemaking and are not repeated here. Summary of Approved Measures

NMFS, on behalf of the Secretary of Commerce, has approved the measures consolidating the regulations governing permit-associated activities for all Northeast Region FMPs that have limited access permits. None of the approved measures apply retroactively. The approved measures: (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 March 22, 1999, as the vessel baseline specification date for FMPs without baselines against which upgrades and replacements are measured (mahogany quahog, *Loligo*/butterfish, *Illex*, scup, and black sea bass,); (6) set the effective date of the final rule implementing the FMP amendments as the revised replacement baseline specification date and the newly established upgrade baseline specification 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 prohibit permit splitting and require a one-time CPH registration.

#### 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.

#### Comments and Responses

NMFS did not receive any comments from the public regarding the measures contained in the proposed rule, or in response to the Notice of Availability of the omnibus amendment. NMFS specifically sought comments from the public regarding the impact of implementing a restriction on vessel upgrading in some fisheries, but did not receive any responses.

#### Changes From the Proposed Rule

Four minor changes from the proposed rule are noted. The first change involves the eligibility criteria in §§ 648.4(a)(1)(i)(A), 648.4(a)(2)(i)(A), 648.4(a)(3)(i)(A), 648.4(a)(4)(i)(A), 648.4(a)(5)(i)(A), 648.4(a)(6)(i)(A), and § 648.4(a)(7)(i)(A). The universe of eligibility for limited access permits has been expanded to include vessels which are replacing vessels for which CPHs have been issued. This is intrinsic to the concept of CPHs, and this has been an established procedure in cases where CPH's have been issued. Also, it is consistent with the American lobster eligibility criteria. This rulemaking will codify the procedure.

Similarly, the second change from the proposed rule involves including a CPH in the qualification restriction in § 648.4(a)(1)(i)(C). This section in the multispecies regulations is incorporated by reference in subsequent sections for the other FMPs. The final rule indicates that if more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Administrator, Northeast Region, NMFS (Regional Administrator) will determine who is entitled to qualify for the permit or CPH and any DAS allocation according to § 648.4(a)(1)(i)(D). The CPH language was added to this section because it is intrinsic to the CPH concept, and has been an established practice in cases where CPH's have been issued. It is also consistent with the American Lobster FMP.

The third change from the proposed rule clarifies the restrictions on changes to a vessel's multispecies or scallop limited access permit category. Sections 648.4(a)(1)(i)(I)(2) and 648.4(a)(2)(i)(I) now clarify that, although it is permissible to request a change in permit category within 45 days of the effective date of a permit, a vessel may fish under only one multispecies or scallop permit category during a fishing year. This clarification is necessary to prohibit vessels from receiving more

than one allocation of DAS under different permit categories. This language is consistent with the regulations at § 648.4(a)(1)(i)(I)(1), and codifies existing policy. Also, the term effective date is now used instead of the issue date because the issue date will no longer appear on vessel permits. The effective date will be either the first day of the fishing year, or the date on which the permit is issued if it is issued during the fishing year.

The fourth change clarifies the manner in which the restriction on vessel upgrades in the summer flounder, mahogany quahog, *Loligo*/butterfish, *Illex*, scup and black sea bass fisheries will be implemented for vessels in the process of upgrading when the restriction becomes effective. As has been the policy for the imposition of other limited access permit requirements, if as of the effective date of the restriction, the vessel is in the process of construction or rerigging, or under agreement or written contract for construction or rerigging, the vessel owner will have an additional 12 months to establish the initial baseline specification for the vessel.

#### Classification

NMFS has determined that the amendments implemented by this final rule are consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. In making this determination, NMFS considered the data, views, and comments received during the comment period for the amendments and proposed rule.

This final rule has been determined to be not 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 final rule 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 impacted vessels (4,430) in these fisheries are small entities and hold at least one limited access moratorium permit in the Northeast Region. However, the final rule would not have a significant economic impact because 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 final 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. These amendments reduce the number of sets of guidelines from four to one, and these guidelines are already applicable in the multispecies and Atlantic sea scallop fisheries.

This action will 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 these 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 are still permissible and, with the exception of upgrades in some fisheries, the regulations are more lenient. Because the proposed restriction on vessel upgrades was difficult to quantify, NMFS sought comments from the public to establish any potential impacts that the restriction may have created. No comments regarding the upgrade restrictions were received. Costs of production and capital costs of compliance will not increase because

the regulations do not impose immediate compliance requirements. This determination was supported by the lack of comments on any of the measures during the proposed rulemaking. Because this action would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis was not required.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person 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 Office of Management and Budget (OMB) Control Number.

This rule contains a new collection-of-information requirement that is subject to the Paperwork Reduction Act (PRA) and has been approved by the OMB under control number 0648-0202. Vessel owners intending to replace vessels, upgrade vessels, or obtain a CPH are required to complete an application form. Public reporting burden for this collection of information is estimated to average 3 hours per response for applicants requesting replacements of vessels permitted for Mid-Atlantic fisheries, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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 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 this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see ADDRESSES).

#### List of Subjects

##### 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

##### 50 CFR Part 649

Fisheries, Reporting and recordkeeping requirements.

Dated: February 12, 1999,

**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 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)(A), (a)(2)(i)(B), (a)(2)(i)(H), (a)(2)(i)(I), (a)(3)(i) heading, (a)(3)(i)(A), (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)(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, be replacing a vessel that was issued a limited access multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(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 paragraph (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 or CPH based on that or another vessel's fishing and permit

history. If more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Regional Administrator will determine who is entitled to qualify for the permit or CPH 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 other 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 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 only once, whether through refitting or replacement. 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 only once, whether through refitting or replacement. 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 otherwise restricted by paragraph (a)(1)(i)(I) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will

have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a 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 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 other 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 is 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) \* \* \*

(A) *Eligibility.* To be eligible to apply for a limited access scallop permit, a vessel must have been issued a limited access scallop permit for the preceding year, be replacing a vessel that was issued a limited access scallop permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(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.

(I) *Limited access permit restrictions.* A vessel may be issued a limited access scallop permit in only one category during a fishing year. The owner of a vessel issued a limited access scallop permit must elect a permit category upon the vessels permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After this date, the vessel must remain in that permit category for the duration of the fishing year. Any DAS that a vessel uses prior to a change in permit category will be counted against its allocation received under any subsequent permit category.

\* \* \* \* \*

(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 in any other 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—(A)*

*Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain summer flounder in excess of the possession limit in § 648.105 in the EEZ, a vessel must have been issued a summer flounder moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(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 March 22, 1999, unless the vessel is in the process of construction or rerigging or under agreement or written contract for construction or rerigging, as of the effective baseline specification date in which case the baseline specifications will be established no later than February 19, 2000.

## (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 in paragraphs (a)(1) and (a)(2) of this section, and an application for a Maine mahogany quahog permit is submitted by May 19, 1999. After May 19, 1999, to be eligible to apply for a Maine mahogany quahog permit, a vessel must have been issued a Maine mahogany quahog permit for the preceding year, be replacing a vessel that was issued a Maine mahogany quahog permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(J) 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.

\* \* \* \*

(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, for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(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 for the preceding year, be replacing a vessel that was issued a scup moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(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 for the preceding year, be replacing a vessel that was issued a black sea bass moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(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 that is 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), and 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 by 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 a limited access lobster permit for the preceding year, be replacing a vessel that was issued a limited access lobster permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history. If more than one applicant claims eligibility to apply for a limited access American lobster permit or CPH 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 to 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 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.

\* \* \* \* \*

[FR Doc. 99-4061 Filed 2-18-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 981222313-8320-02; I.D. 021299B]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-pelagic Trawl Gear in the Red King Crab Savings Subarea

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 14, 1999, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and CFR part 679.

The Interim 1999 Harvest Specifications of Groundfish (64 FR 50, January 4, 1999) established the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS as 10,000 animals. The RKCSS was closed to fishing with non-pelagic trawl gear on January 25, 1999 (64 FR 4602, January 29, 1999) and then re-opened on February 1, 1999 (64 FR 5720, February 5, 1999) when it was determined that the bycatch limit was not fully utilized.

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS will be caught. NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the amount. Further delay would only result in the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

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

Dated: February 12, 1999.

**Gary C. Matlock,**

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

[FR Doc. 99-4030 Filed 2-12-99; 5:00 pm]

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