

Federal Acquisition Regulation (FAR) 2.101 related to cost or pricing data. Included within the definition of “data other than certified cost or pricing data” is a statement that such data may include the identical types of data as “certified cost or pricing data,” but without the certification. Thus, the definitions of both “certified cost or pricing data” and “data other than certified cost or pricing data” refer to cost or pricing data.

### C. Conclusion

The CAS Board believes the August 30, 2010 revisions to FAR 2.101 may cause some confusion over the applicability of CAS in view of the current wording of the (b)(15) FFP exemption. Consistent with Section 802, it has not been the CAS Board’s intent to apply CAS to FFP contracts or subcontracts awarded on the basis of adequate price competition where certified cost or pricing data was not obtained. Therefore, the CAS Board is considering a proposed change to the wording of the (b)(15) FFP exemption.

### D. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35, Subchapter I) does not apply to this rulemaking, because this rule imposes no additional paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The purpose of this proposed rule is to clarify the implementation of the “Streamlined Applicability of Cost Accounting Standards” at Section 802 of National Defense Authorization Act for Fiscal Year 2000.

### E. Executive Order 12866, the Congressional Review Act, and the Regulatory Flexibility Act

This rule serves to clarify the elimination of certain administrative requirements associated with the application and administration of the Cost Accounting Standards by covered Government contractors and subcontractors, consistent with the provisions of “Streamlined Applicability of Cost Accounting Standards” at Section 802 of National Defense Authorization Act for Fiscal Year 2000. The economic impact on contractors and subcontractors is, therefore, expected to be minor. As a result, the CAS Board has determined that this proposed rule will not result in the promulgation of an “economically significant rule” under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be

required. Finally, this rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. Chapter 6.

### List of Subjects in 48 CFR Part 9903

Cost accounting standards,  
Government procurement.

#### Daniel I. Gordon,

*Chair, Cost Accounting Standards Board.*

For the reasons set forth in this preamble, chapter 99 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

### PART 9903—CONTRACT COVERAGE

1. The authority citation for Part 9903 continues to read as follows:

**Authority:** Public Law 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

#### SUBPART 9903.2—CAS PROGRAM REQUIREMENTS

2. Section 9903.201–1 is amended by revising paragraph (b)(15) to read as follows:

##### 9903.201–1 CAS applicability.

\* \* \* \* \*

(b) \* \* \*

(15) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 110907562–1598–01]

RIN 0648–BB40

### Fisheries of the Northeastern United States; Changes to Vessel Replacement and Upgrade Provisions for Fishing Vessels Issued Limited Access Federal Fishery Permits

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

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NMFS, in consultation with the Atlantic States Marine Fisheries Commission (Commission) and the New England and Mid-Atlantic Fishery Management Councils (Councils), is considering changes to the current system of regulations that limit the potential size of a replacement vessel. This advance notice of proposed rulemaking (ANPR) provides background information and requests public comment on the administrative and financial burdens of the current system, as well as on what type of changes would be appropriate to reduce that burden and the regulatory complexity without adversely affecting the fishery. NMFS will consider all recommendations received in response to this ANPR prior to any proposed rulemaking.

**DATES:** Comments must be received on or before December 5, 2011.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2011–0213, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, and then enter NOAA–NMFS–2011–0213 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Mail and hand delivery:** Submit written comments to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Vessel Upgrade ANPR.”

- **Fax:** (978) 281–9135.

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected

information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**  
Douglas Potts, Fishery Policy Analyst,  
(978) 281-9341, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Measures to limit the potential size of a replacement vessel were first implemented in the Northeast Region in 1994 in conjunction with the adoption of limited access permits in the Northeast Multispecies and Atlantic Scallop Fishery Management Plans (FMP). NMFS enacted these measures to promote conservation of the fish species by limiting the potential increase in fishing capacity of the fleet and thereby maintaining total fishing mortality within the requirements of the respective rebuilding schedule of the FMP. In the following years, NMFS adopted limited access permits for other fisheries in the Northeast, some of which included various restrictions on how a permitted vessel could be replaced. In 1999, an omnibus amendment (Consistency Amendment) to all the FMPs of the Councils was implemented (64 FR 8263, February 19, 1999) to expand and standardize the upgrade restrictions to encompass most of the limited access fisheries in the Northeast.

The current regulations restrict the size and horsepower of any replacement vessel, or modifications to the current vessel, based on the specifications of a baseline vessel. The baseline vessel for each limited access permit is typically the first vessel issued the limited access permit in that fishery at the time that permit was issued. In the case of fisheries that adopted baseline restrictions through the Consistency Amendment, the permitted vessel as of the date of the final rule's implementation sets the baseline. In some cases, this methodology resulted in a single vessel with permits for multiple fisheries having more than one baseline. In that situation, the most restrictive combination of baseline specifications applies, unless the vessel owner chooses to relinquish permanently the permit with the more restrictive baseline(s).

Current regulations allow vessel owners to increase (or upgrade) a specification either by moving the limited access permit to a new vessel or by modifying the current vessel, up to

10 percent above of the baseline vessel's length overall, gross registered tonnage, and net tonnage and up to 20 percent above the baseline vessel's horsepower. As a matter of NMFS policy, all calculated maximum upgrade values are rounded up to the next whole number. The baseline size and horsepower specifications associated with a permit can only be upgraded once, although the vessel size characteristics (length overall, gross registered tonnage, and net tonnage) and engine horsepower can be upgraded at different times. For example, a vessel owner looking to replace his current vessel, which has a baseline engine horsepower of 300, may, if the horsepower on that permit was not upgraded before, move it to a vessel with up to 360 horsepower (20 percent greater than the 300-horsepower baseline). If the owner opts for a new vessel with a 340-horsepower engine, that action counts as the one-time upgrade, and any future replacement vessel could not exceed that new 340-horsepower maximum limit. The baseline size characteristics can be upgraded through this same vessel replacement or used another time. However, since size characteristics are upgraded as a group, if the baseline length overall is upgraded but not the gross and net tonnages, the baseline tonnage specifications cannot be upgraded in the future.

When a vessel owner wants to move a limited access Federal fishery permit to a replacement vessel, as part of the application he must provide documentation from a third party to demonstrate that the length, gross registered tonnage, net tonnage, and horsepower are within the limits for that permit. Many vessels use the U.S. Coast Guard vessel documentation certificate for length and tonnages, although the documentation certificate should then reflect the length overall as required by NMFS regulation, rather than the typical registered length. Vessels that are not documented by the U.S. Coast Guard must provide other documentation for vessel size. Obtaining vessel specification documents may involve the time and expense of having the new vessel measured by a marine surveyor or other qualified individual. Engine horsepower documentation may require testing by a marine mechanic and documentation of the results on formal letterhead. On the other hand, all of this information might be routinely obtained for other purposes (e.g., for insurance coverage) and it could be a minimal additional cost to provide copies as part of a permit transfer application. The cost of documenting vessel

specifications has been previously estimated at \$375 for calculating the burden to the public under the requirements of the Paperwork Reduction Act. The full cost to the industry of this process is not clear, and the public is encouraged to submit comments on how much of a financial and time burden this process has been.

Some members of the fishing industry have reported that it can be difficult to find a suitable replacement vessel within allowed upgrades, especially for small boats. For example, a replacement for a 25-ft (7.6-m) baseline vessel could not exceed 28 ft (8.5 m), and manufacturers may not make vessels in the allowed size range that also meet other specific needs of a vessel owner. Similarly, modern marine engines are manufactured to meet more stringent emissions standards, and horsepower ratings may not be as adjustable as in the past without violating those limits. The safety of a vessel at sea, especially in adverse weather conditions, is affected by many factors, including the size of the vessel. NMFS encourages comments from the public on the availability of suitable replacement vessels, and the impact this has on safety at sea.

The primary justification for the adoption of upgrade restrictions was to control the potential increase in catch from each permitted vessel that could occur with increases in vessel size and horsepower and, therefore, to prevent unexpected increases in fishing mortality that could hinder a rebuilding program. Since the initial implementation of vessel upgrade and replacement restrictions, many fisheries have also adopted trip limits or other measures that control the potential harvest of a vessel beyond just restricting vessel size. In addition, the recent adoption in all fisheries of annual catch limits that cap total harvest in a given year may reduce the concern over excessive fishing mortality. In light of these other measures, it is possible that vessel baseline restrictions could be relaxed without adversely affecting stock rebuilding. However, the upgrade restriction is considered one factor that is helping to preserve the small vessel character of the fishing fleet in the Northeast region. Larger and more powerful vessels could also have increased impacts on habitat or bycatch of non-target species. Further, fishery management actions adopted by the coastal states through the Commission may rely on the baseline upgrade restrictions for federally permitted vessels to control harvest potential. These considerations will have to be more fully understood before a change

to current regulation can be implemented.

A wide range of options could be considered as part of any action to change vessel baseline regulations. NMFS would like public input on the full range of potential actions, including suggestions for other changes to baseline regulations that are not specifically listed in this announcement, such as how to treat vessels that have multiple baselines and/or have already upgraded under the current system. Potential changes may include one or more of the following.

1. *Eliminate tonnages from vessel baseline regulations.* The tonnages are often considered the most malleable of baseline specifications. The gross registered tonnage can vary significantly depending on whether exact measurements or the simplified calculation method is used. Similarly, net tonnage can be calculated based either on the gross tonnage or from measurements of the vessel, and may be changed by modifying internal bulkheads. Tonnage has also been a concern for owners of vessels built outside of the United States that are determined to be under 5 net tons (14.16 m<sup>3</sup>) for import purposes.

2. *Eliminate the one-time upgrade provision.* This would eliminate the incentive to use as much of the available upgrade as possible to avoid “losing” some amount of future upgrade. The change could also simplify upgrade considerations by establishing the

maximum specifications of any future vessel without needing to know whether any specification has already been upgraded. For example, under this option, if the permit on your vessel has a baseline horsepower specification of 300, and at some point moved to a vessel with 340 horsepower, a future replacement vessel could still be up to 360 horsepower (20 percent greater than the 300-horsepower baseline).

3. *Change from a system of fixed upgrades to a system of size classes.* This option would allow a vessel owner to move a permit to any vessel that fits within the specified size class. The specifics of this type of change, including the number and size of the size classes, have not been fully developed, and NMFS seeks comment to this end. Specific size classes could be based on vessel length, horsepower, or a combination. Such a system would simplify the vessel replacement considerations by making them uniform for all vessels in a particular size class rather than the current system where potential upgrades are unique to each permit. However, determining specific size classes that are appropriate for all fisheries may be difficult, and such a system might disadvantage vessels that are already at the upper limit of a size class.

4. *Remove baseline upgrade restrictions for vessels under 30 ft (9.1 m).* The Councils discussed this potential measure in 1998 during the development of the Consistency

Amendment, and again in 2003, but took no formal action at either time. This approach would remove the burden on the smallest vessels as long as they stay under 30 ft (9.1 m), but would establish upgrade provisions that are not uniform for all vessels, which might be confusing or seen as unfair.

5. *Complete removal of upgrade restrictions.* This would allow any vessel owner to move his/her permit to any other vessel. It would provide maximum flexibility to the industry, but would remove the baseline system's restrictions on fleet structure and would likely have the largest impacts on the fishery and the environment.

The long comment period for this ANPR is intended to overlap with meetings of both Councils. While this topic may be discussed at the Council meetings, please submit written comments on the burden of the current vessel baseline system, the potential changes outlined here, or any suggestions for other changes that might be appropriate through one of the methods identified in the **ADDRESSES** section of this ANPR, to ensure that they are fully considered.

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

Dated: September 30, 2011.

**Samuel D. Rauch III,**  
Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

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