



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

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Lt. Governor

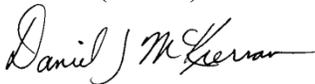
REBECCA L. TEPPER  
Secretary

THOMAS O'SHEA  
Commissioner

DANIEL J. MCKIERNAN  
Director

### MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Director 

DATE: November 9, 2023

SUBJECT: **Future Public Hearing Item – Limited Entry Endorsement Transfer Amendments**

#### Proposals

DMF will proceed to public hearing to potentially amend its limited entry regulated fishery permit endorsement transfer regulations in the following ways:

1. Implement an Immediate Family Member Transfer Exception to allow an otherwise transferable latent limited entry permit endorsement to be transferred to an immediate family member.
2. Expand the definition of Immediate Family Member to reflect a wider diversity of family structures.
3. Relax the transferability rule for Fluke, Sea Bass, and Tautog endorsements so that they only have to be actively fished in two out of the last five years, rather than the current four out of the last five years.

#### Rationale

At the request of industry members, and working with the MFAC Permit Focus Group, DMF has been examining the transfer eligibility criteria for certain limited entry regulated fishery permit endorsements for the past several months. This exercise was designed to examine ways to increase access for new and existing commercial fishers to access certain fisheries. Currently, the transfer of limited entry permits and endorsements is governed by a series of long-standing laws, regulations, and policies. By regulation, most limited entry permits and endorsements need to have been “actively” fished during four out of the last five years to be eligible for transfer. In some cases, actively fished in a given year is further defined by regulation or policy with a minimum threshold (e.g. one trip limit in aggregate in a year for Fluke, Sea Bass, and Tautog endorsements). These criteria were modeled after the longstanding Coastal Lobster Permit transfer regulations.

#### *Immediate Family Transfers*

The Coastal Lobster Permit transfer regulations include an exception allowing the transfer of latent permits (i.e., those that have not been actively fished for four out of the past five years) between immediate family members. This is a long-standing exception, supported by the lobster industry. Despite DMF emulating its limited entry permit endorsement transfer regulations after the Coastal Lobster Permit transfer regulations, a similar exemption does not exist for the transfer of limited entry endorsements. In recent years, DMF has received numerous requests for immediate family member transfers on certain endorsements, and in some instances these requests have been denied because the endorsement(s) is latent

and not otherwise transferable (e.g., through [DMF's Bundling Policy](#)). Moving forward, DMF seeks to accommodate the transfer of latent, but otherwise transferable, limited entry endorsements among immediate family. We expect this will help keep family businesses and traditions intact.

#### *Immediate Family Definition*

While reviewing the immediate family member transfer exception, DMF determined its current definition of “immediate family member<sup>1</sup>” is outdated and does not reflect the diversity of modern family structures. Accordingly, we seek to adopt a more inclusive definition that would minimally include step and adoptive relationships, consistent with other definitions in state law and regulation.

#### *Actively Fished Criteria for Fluke, Black Sea Bass and Tautog Endorsements*

The Focus Group and DMF spent considerable time discussing approaches to relaxing DMF's permitting rules to create greater access to our fisheries. Through these discussions, DMF settled on an iterative and data-driven approach to revisiting the standard that a permit must be actively fished during four out of the past five years. At present, DMF is proposing to relax this standard for Fluke, Sea Bass, and Tautog endorsements to two out of the last five years. Fluke, Sea Bass, and Tautog endorsements are being considered first because they are quota monitored fisheries with low barriers to entry (e.g., infrastructure investment) and are accessible to persons seeking to enter the commercial fishing industry. Additionally, rod and reel fishing effort targeting these species are variable from year-to-year and this can in turn make the current four out of five year standard a high bar to reach.

At the recommendation of the Focus Group, DMF conducted an analysis of each of the three endorsements to determine the potential number of transferable endorsements at various thresholds between one out of five years to four out of five years. Actively fished in a given calendar year for each of these endorsements is defined by existing [DMF policy](#) as having landed and sold at least one trip limit, in aggregate, during that calendar year. While there have been recent annual adjustments to possession limits for fluke and black sea bass, the following thresholds were used as proxies for this analysis: 300 pounds for fluke, 250 pounds for black sea bass, and 120 pounds for tautog.

Figures 1 through 3 below show the analysis for Fluke, Sea Bass, and Tautog, respectively. For all three endorsement types, relaxing from a four out of five years actively fished threshold to two out of five years more than doubles the number of potential endorsements of each type that would potentially be considered transferable based on activity alone. Moreover, additional endorsements may ultimately be transferable when the permit bundling policy is applied (e.g., latent Tautog, Fluke, or Black Sea Bass endorsements may be transferred if bundled with an active Tautog, Fluke, or Black Sea Bass endorsement). This does not account for a permit holder's desire to transfer these endorsements.

As a proxy for the number of permit holders potentially interested in transferring one of these endorsements, DMF also looked at the age of the permit holders with actively fished endorsements. At the two-out-of-five-year activity threshold, approximately half of the active endorsements are held by permit holders over 60 years old. We feel that this is the age group that may be more inclined to retire and transfer their endorsements.

The challenge in creating a new transferability standard is finding the sweet spot between enhancing the potential supply of transferable permits to benefit industry and fishermen and diluting transferability thresholds to a point where we substantially increase effort and participation to a point where we negatively impact fishery performance, quota consumption, and profitability.

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<sup>1</sup> At 322 CMR 7.00, immediate family is defined as, “the legal father, mother, wife, husband, sister, brother, son, daughter, grandparent, or grandchild.”

I believe the two-out-of-five-year standard finds this sweet spot, whereas the even more liberal one-out-of-five-year standard would be problematic. I am comfortable with effectively doubling the number of potentially transferable Fluke, Sea Bass, and Tautog endorsements and such a change would make approximately 66 Fluke endorsements, 289 Sea Bass endorsements, and 97 Tautog endorsements transferable. The increase in the number of transferable endorsements would provide significantly more opportunities for new commercial fishers to enter and existing commercial fishers to diversify their portfolios. Based on our analysis, a standard of actively fished in one-out-of-five-year standard would increase the number of potentially transferable endorsements by three to four-fold (as compared to a doubling achieved at the proposed two-out-of-five-year standard). This would produce an even larger number of potentially transferable endorsements given the combined effect of the low threshold for what constitutes actively fished (i.e., one trip limit per year), the lack of an owner-operator requirement for these endorsements, and our current bundling policy. In effect, such a standard would allow a person who holds all three endorsements to transfer them after having a third-party (hired captain) land and sell one limit of one species against their permit during a single season. Accordingly, I do not support relaxing the standard to this level.

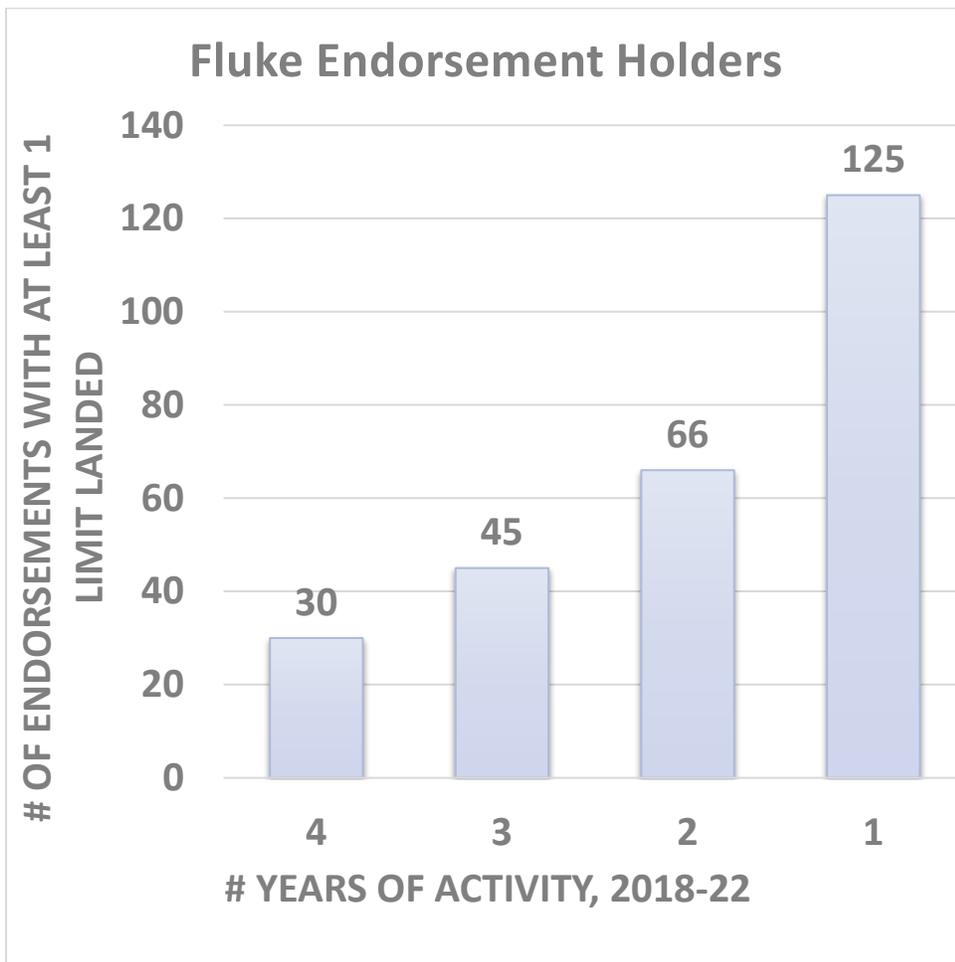


Figure 1. Fluke Activity

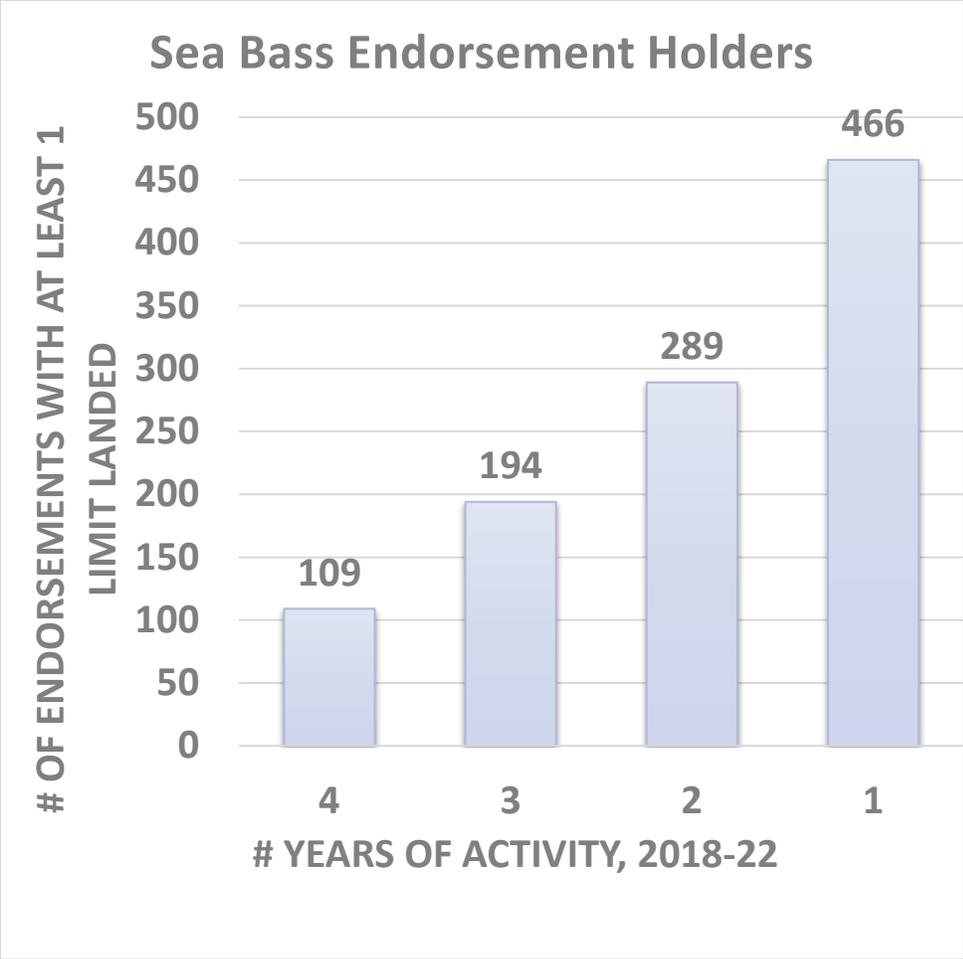


Figure 2. Sea Bass Activity



**Figure 3. Tautog Activity**

**Additional Discussion**

An additional item came up at the October 30, 2023 Permit Focus Group meeting regarding the actively fished criteria for Coastal Lobster Permits endorsed to fish in Lobster Management Area (LMA) 1. Currently, in order to be considered transferable an LMA 1 Coastal Lobster Permit has to have landed and sold at least 1,000 lbs of lobster or landed and sold lobster on at least 20 occasions as evidenced by harvester and dealer reporting in four out of the past five years. The scenario that came up involves Coastal Lobster Permit holders who are also permitted in other fisheries (e.g. sea scallops) and choose to prosecute one of those fisheries in a given year instead of lobstering. If the permit holder chooses to do this and foregoes lobstering completely for two or more years in a span of five consecutive years, then the Coastal Lobster Permit would no longer be considered transferable. The case was made that an otherwise full-time commercial fisher is being penalized for a business decision to prosecute another fishery for which they are permitted. To address this, DMF could adopt other alternative transferability criteria to allow for the transfer of a Coastal Lobster Permit that does not meet the actively fished criteria if the permit met other commercial fishing thresholds (e.g., permit holder had more than \$20,000 of ex-vessel sales in another fishery in a given year). DMF will discuss this more with industry with the possibility of a future rulemaking proposal.

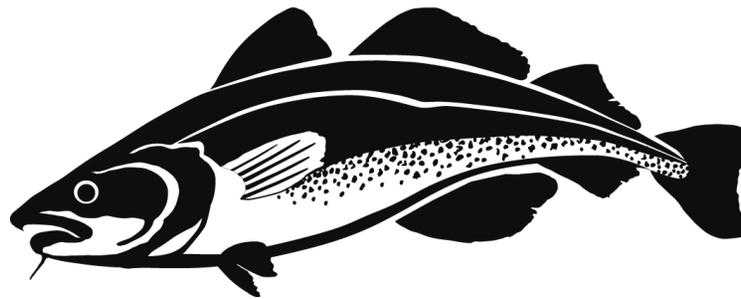
**Attachment**

October 30, 2023 Presentation to Permitting Focus Group

# Permitting Focus Group

October 30, 2023

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# Purpose

## Endorsement-Specific Activity Standards

- Review scenarios estimating the number of additional endorsements that could become transferable if standards are relaxed from the 4 out of 5 years
- Scenarios run on Fluke, Sea Bass, and Tautog endorsements
- Age of permit holders taken into consideration
- Receive feedback and move forward



October 31, 2023

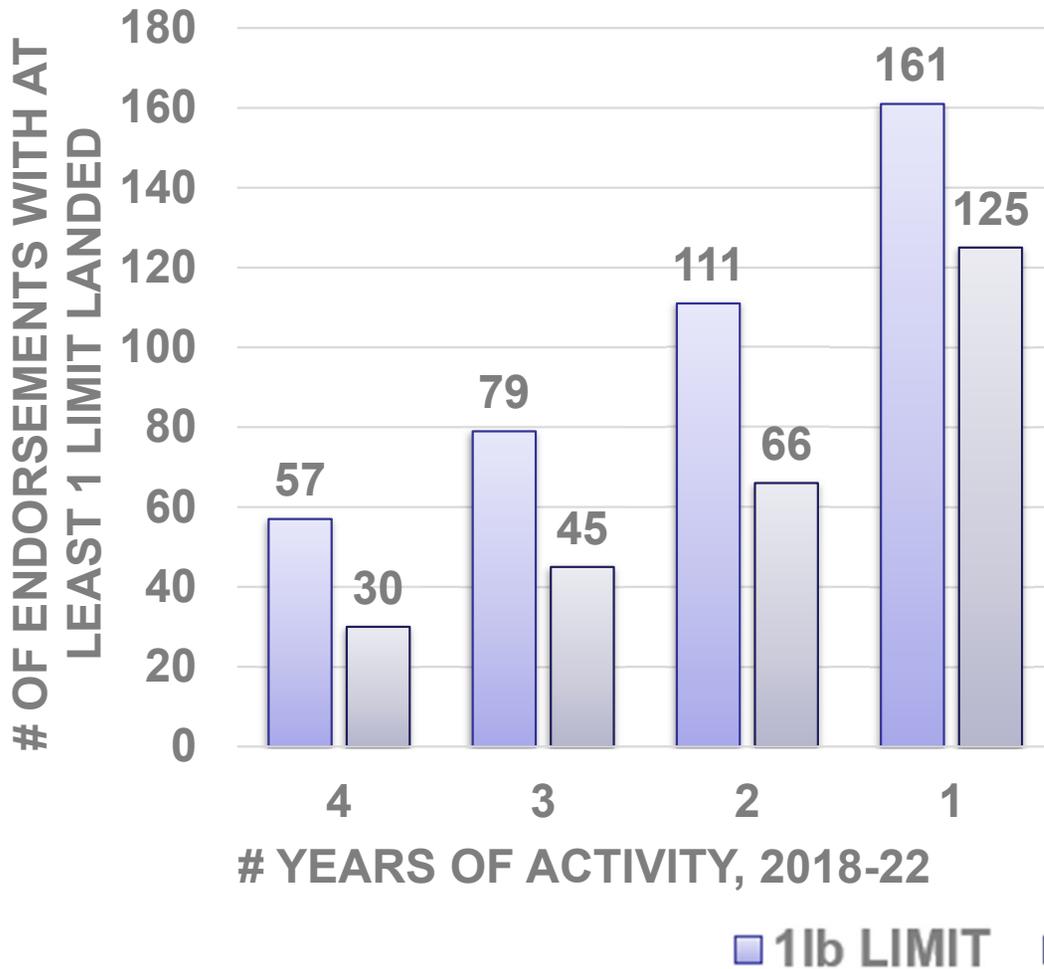
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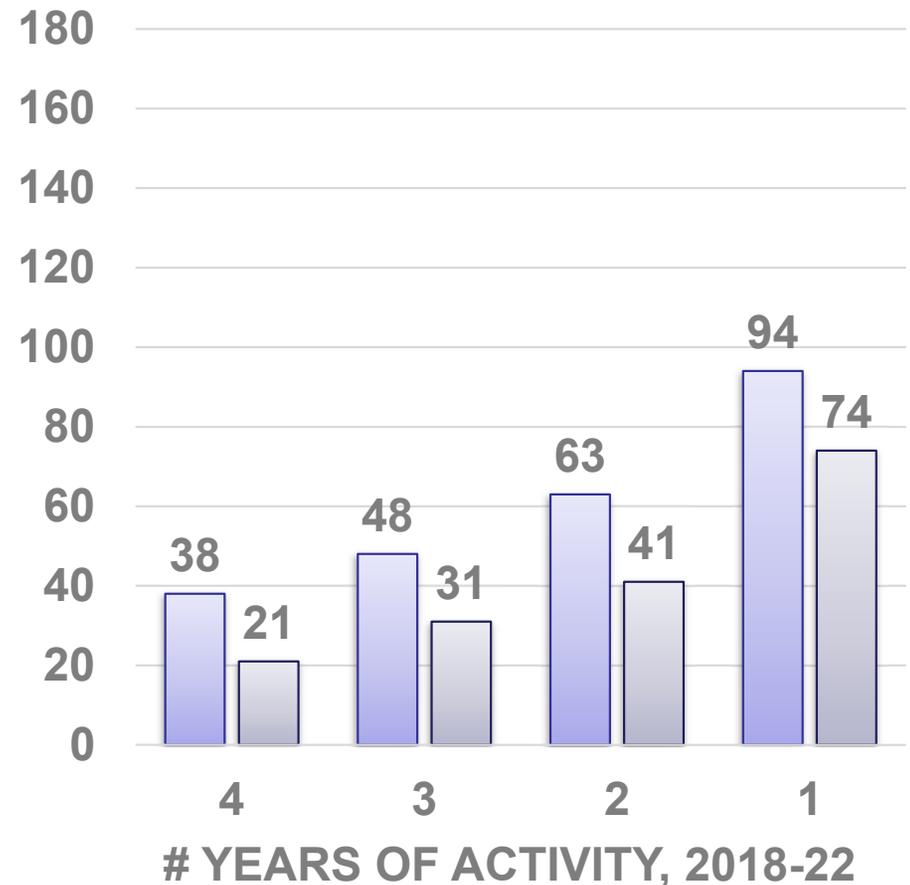
# Fluke Activity

Estimated # of Fluke Endorsements Qualifying for Various Transfer Scenarios in 2023 based on Activity from 2018-22

All Permit Holders



Permit Holders over 60



Data Source: MA Trip-Level Reports and NMFS VTRs, 10/27/2023



October 31, 2023

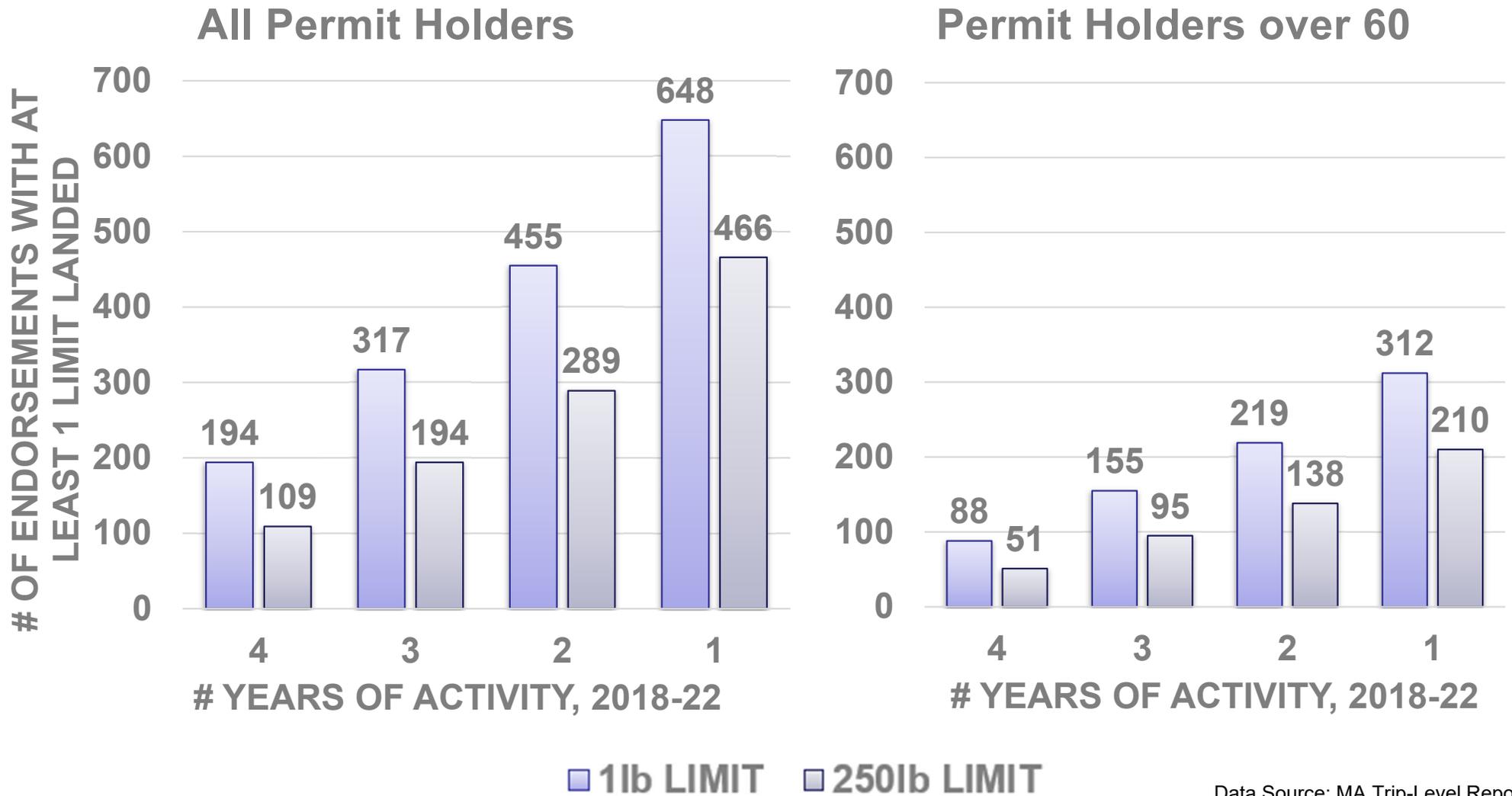
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# Sea Bass Activity

**Estimated # of Sea Bass Endorsements Qualifying for Various Transfer Scenarios in 2023 based on Activity from 2018-22**



Data Source: MA Trip-Level Reports and NMFS VTRs, 10/27/2023



October 31, 2023

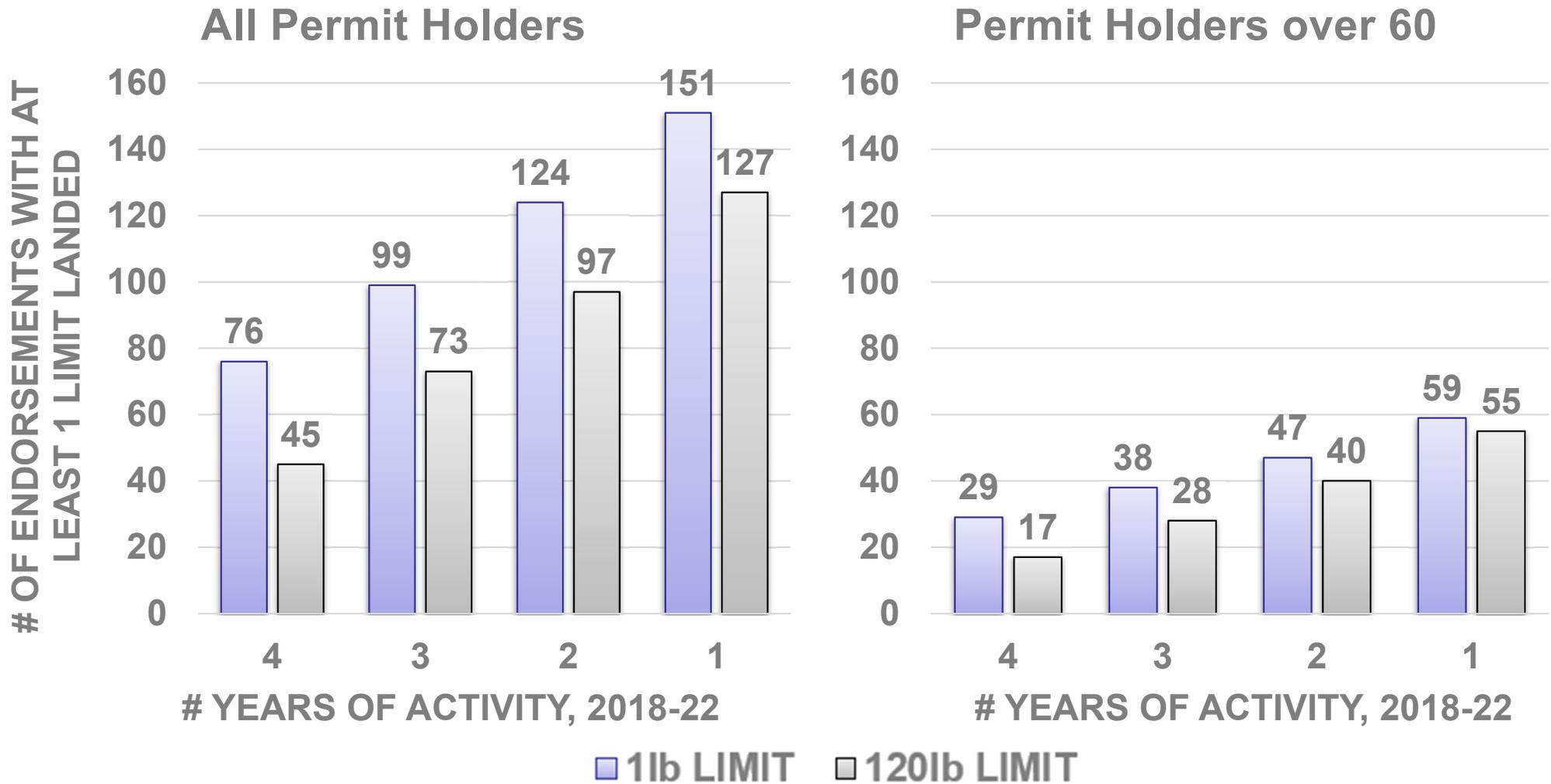
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# Tautog Activity\*

**Estimated # of Tautog Endorsements Qualifying for Various Transfer Scenarios in 2023 based on Activity from 2018-22**



\*Tautog endorsements began to be issued in 2018 and became limited entry in 2020. Five years are still considered for current transfers.

Data Source: MA Trip-Level Reports and NMFS VTRs, 10/27/2023



# Additional Considerations

- Bundling policy will create additional movement of endorsements (e.g., an inactive Fluke endorsement can be bundled with an active Sea Bass endorsement)
- Immediate family transfer exception to actively fished standards will create movement not captured in these scenarios



October 31, 2023

Slide 6



# Number of Issued Endorsements by Year

Endorsement	2018	2019	2020	2021	2022	2023
Fluke	674	656	635	612	587	562
Sea Bass	1,260	1,224	1,168	1,117	1,078	1,039
Tautog	2,040	2,044	218	214	210	204

## Ages of 2023 Permit Holders with the Rod & Reel endorsements, regardless of activity status

Age Bin	FLUKE	SEA BASS	TAUTOG
<=30	10	23	5
>30 to <=40	15	72	22
>40 to <=50	31	126	38
>50 to <=60	121	256	52
>60 to <=70	173	312	57
>70	123	180	23
Age Unknown	89	70	7

