



Massachusetts Division of Marine Fisheries

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Policies, Procedures, and Guidelines

Issue: Policy on Vessel Ownership Requirements for Use of Limited Entry Permits and Replacement Vessels
No: PPG-02

Introduction and Purpose:

As of April 10, 2006, the Division of Marine Fisheries (DMF) has instituted new guidelines regarding transfers of limited entry permits and shifting of certain permits to other vessels owned or partially owned by other permit holders. Such permit schemes are inconsistent with the Commonwealth's ban on permit leasing and counter to the intent of limited entry permit transfer rules (322 CMR 7.06) where only fishermen who have actively fished permits may transfer them. Vessel replacements with discrepancies in vessel ownership between the former and new vessel are inconsistent with the regulatory prohibition on un-authorized permit transfers to another person or legal entity.

DMF manages many commercial fisheries through the issuance of limited entry permits, including lobster permits as well as endorsements for sea bass pot, conch pot, scup pot, gillnet, surf clam, ocean quahog, fluke, state waters bay quahog dredging, state waters groundfish, and mobile gear coastal access. Unlike the federal permit system, state fishing permits are issued to persons – not vessels – though vessel characteristics and limits on vessel upgrades comprise key restrictions on some of the permits.

DMF regulations allow most limited entry permits to be transferred provided certain performance criteria are met. For most permits this entails having the permit be "active", meaning fished for 4 of the past 5 years, with documented landings (322 CMR 7.06). In some cases fishermen have sought to lease their permit or have other fishermen use the permit to enhance the "active" fishing history. Permit holders have accomplished this by obtaining a new commercial boat permit (naming a second fishermen's vessel) and assigning the limited entry endorsement to the new permit. It's easy to modify a vessel's registration by adding a second owner of the vessel alleging "co-ownership."

Policy:

Permit holders may be allowed to replace a vessel on their existing commercial boat permit to address routine situations of vessel breakdown, loss, or upgrades. Ownership of the new vessel must be the same as the old vessel and must be reflected in the vessels' documentation or registration. Permit holders seeking vessel replacements shall submit a request in writing to DMF on forms provided. The form can be downloaded at DMF's web site: http://www.mass.gov/dfwele/dmf/commercialfishing/permit_index.htm.

If circumstances prevent a permit holder from replacing the vessel with one they own, then they may replace the vessel with one owned by another person, subject to the permit holder being aboard the vessel at all times.

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If a permit holder applies for a new boat permit and seeks to shift a limited entry endorsement over to that permit, the new vessel must be under the same ownership as the original vessel. Identical ownership must be reflected in the vessel's documentation or registration.

DMF will deny applications if the qualifying and replacement vessels are under the sole ownership and control of the same individual, but are owned by different corporations. The same is true in cases where one vessel is under the ownership of one individual, while the other vessel is owned by a corporation (even if the corporation is under the sole ownership and control of the same individual). Both are considered separate legal entities.

In the case of corporations, including Limited Liability Corporations (LLCs), a stockholder certificate, showing that an individual is a shareholder in the organization owning the vessel, is not sufficient evidence to prove that the individual or corporation has ownership rights to the corporation's assets (i.e., the vessel and its permits).

In summary, vessel replacements with discrepancies in vessel ownership between the former and new vessel are deemed inconsistent with the regulatory prohibition on unauthorized permit transfers to another person or legal entity. These new guidelines are consistent with DMF's regulations and policies requiring all limited entry permits to be owner/operator after a transfer (322 CMR 7.06(4)(b)). Owner/operator requirements apply to all permits except the Mobile Gear Coastal Access Permit where the requirement is for the permit holder to be owner/manager. (322 CMR 7.06(4)(e)(2))