

on the vessel's Coast Guard documentation.

The original permits and their respective endorsements will remain in effect for the lifetime of each permit, regardless of the GT of a vessel to which it was transferred. In cases where a permit is transferred to a vessel with a smaller GT, the original GT endorsement will remain, and excess GT cannot be split out from the original permit configuration and sold. In cases where two or more permits are transferred to a larger vessel, the larger vessel will hold the original permits and can fish for CPS finfish as long as the aggregate GT endorsements, including the 10 percent allowance, as defined by the formula for comparable capacity (vessel GT + .10 (GT) or less) adds up to or exceeds the new vessel's calculated GT. In the event that a vessel with multiple permits leaves the CPS limited entry program, the permits can be sold together or separately, but the original permit endorsement cannot be altered.

To ensure manageability of the permit program and stability of the fleet, only one transfer per permit will be allowed during each calendar year. Permits can be used only on the vessel to which they were registered. Catch history will be tied to the vessel and not to the permits.

#### **Maintaining the Capacity Goal**

When the upper threshold of aggregate fleet capacity plus 5 percent (5,933.5 mt) is reached, fleet capacity will be restored to the capacity goal (5,650.9 mt) by restricting conditions for permit transfer. The choice of 5 percent is a balance between allowing permit owners flexibility to improve their economic situation by modifying existing vessels or acquiring new vessels without leading to a fleet capacity that will take too long to return to the capacity goal. When the threshold of 5,933.5 mt is reached or exceeded, permits can only be transferred to vessels with equal or smaller GT, and the 10-percent vessel allowance will be removed. Restoring the 10 percent allowance can be considered when total aggregate fleet capacity reaches the 5,650.9 mt target.

#### **Procedures for Issuing New Limited Entry Permits**

Based on changes in CPS finfish resources or market conditions, the Council may recommend to NMFS that new limited entry permits should be issued. If NMFS approves the recommendation, a notice will be published in the **Federal Register** describing the details of the recommendation. If new permits are

issued, the qualifying criteria originally established in the FMP will be used for issuance. This will entail continuing down the list of vessels having landings during the 1993–97 window period in order of decreasing window period landings from the original qualifying level of 100 mt. If no vessel meets the qualifying criteria of 100 mt, then the permit will be issued to the vessel with total landings nearest 100 mt during the qualifying period. New permits can be issued on either a temporary or permanent basis, depending on the circumstances surrounding the need for additional fleet capacity.

#### **Comments and Responses**

Two letters were received. The comments therein focused primarily on the process used to issue new limited entry permits. Under Amendment 10 and the proposed rule, the Regional Administrator would use the qualifying period of January 1, 1993, through November 5, 1997, and the same qualification of landing at least 100 mt during this period as described in Amendment 8 to the FMP. If no vessel meets the landing requirement, then the permit would be issued to the vessel with landings nearest 100 mt.

*Comment 1:* The approach is arbitrary because (1) any gear that made the landing would be eligible, which could create a windfall for the qualifying vessel through transfer of the permit from a vessel that did not intend to fish CPS; (2) the procedure does not take into account section 301(a)(8) of the Magnuson-Stevens Act, which requires that proposed actions provide for sustained participation of fishing communities and minimize the impact on fishing communities, in this case, the fishing community of San Diego; and (3) the status of the California market squid fishery and the CPS finfish fishery, which are limited by the geographical range of the limited entry regime and recognized as closely related economically by the FMP, were not taken into account.

The commenter recommended that the inadequacies of Amendment 10 described in the previous paragraph be corrected by the following:

1. Issue permits to round-haul vessels that hold a market squid permit from the State of California. Amendment 10 recognizes the importance of squid to the CPS fishery, and some of these vessels that have participated in the CPS fishery before the qualifying period hold these permits.

2. Include as criteria for a permit, provisions of a California law that requires eligibility for fishermen that can provide evidence showing

participation as a commercial fisherman for 20 years and who were participants in the CPS fishery for at least one of those years.

3. Include vessels that have a drift gill net shark and swordfish permit issued by the State of California.

4. Include vessels that have a history of participation in the tropical tuna fishery and the owner of the vessel is a member of the San Diego fishing community.

5. Include vessels that did not land 100 mt during the qualifying period.

The proposed remedy would not contribute to overcapitalization because fewer than 10 vessels are likely to qualify. The remedy also would minimize the impact on the fishing community in San Diego. Some vessels have squid permits but do not have CPS limited entry permits. Vessels that lost fishing access to Mexico when the Magnuson-Stevens Act extended jurisdiction to highly migratory species entered the drift gill net fishery. Recognizing the importance of having a squid permit and a CPS limited entry permit, and implementing the California criteria of historical participation makes a more reasonable accommodation to the fishing community in San Diego.

*Response:* The FMP does not specify the gear used for taking CPS because how the resource is harvested has never been an issue. Implementation of limited entry was expected to be beneficial to the economics of the fishery as a whole and may or may not be beneficial to any specific fisherman, because the value of permits is related to the condition of the resource and the prevailing markets for the harvest, both of which fluctuate over time.

Nevertheless, limiting the number of harvesters tends to reduce individual risk. New permits would be issued only if the capacity of the fleet falls below the goal or the condition of the resource is such that new permits are warranted. Those individuals who participated in the fishery in the past but left the fishery and did not make the required landings during the window period, may qualify under the procedures of Amendment 10 if landings lower than 100 mt are considered. The Council decided to retain the current control date, window period, and level of landings required when issuing additional permits. This approach was adopted to be less disruptive in terms of displacing vessels from the fishery and reduces impacts on existing fishing patterns, and, therefore, on fishing communities.

Through Amendment 8 NMFS closely examined the relationship between vessels harvesting CPS finfish and those