

FIGURES—PART 640

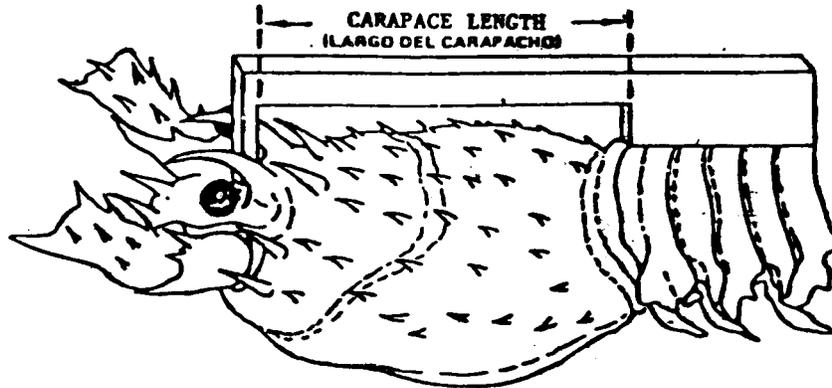


Figure 1

[47 FR 29203, July 2, 1982. Redesignated at 57 FR 56518, Nov. 30, 1992]

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

SOURCE: 61 FR 34968, July 3, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes for part 648 appear at 62 FR 14651, Mar. 27, 1997.

Subpart A—General Provisions

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMP) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); and the Atlantic bluefish fishery (Atlantic Bluefish FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

(b) This part governs domestic fishing only. Foreign fishing is governed under subpart F of part 600 of this chapter.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43424, Aug. 23, 1996; 62 FR 13299, Mar. 20, 1997]

§ 648.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 600.10 of this chapter, the terms used in this part have the following meanings:

Alewife means *Alosa pseudoharengus*.

American lobster or *lobster* means *Homarus americanus*.

American shad means *Alosa sapidissima*.

Atlantic butterfish or *butterfish* means *Peprilus triacanthus*.

Atlantic croaker means *Micropogonias undulatus*.

Atlantic mackerel or *mackerel* means *Scomber scombrus*.

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Northeast Regional Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

Atlantic salmon means *Salmo salar*.

Atlantic sea scallop or *scallop* means *Placopecten magellanicus*, throughout its range.

Beam trawl means gear, consisting of a twine bag attached to a beam attached to a towing wire, designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

Black sea bass means *Centropristis striata*.

Black Sea Bass Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Northeast Regional Office of NMFS, the Northeast Fisheries Science Center, and Commission representatives. The Council Executive Director or his designee chairs the Committee.

Black sea bass pot or *black sea bass trap* means any such gear used in catching and retaining black sea bass.

Blowfish (puffer) means any species in the family Tetraodontidae.

Bluefish means *Pomotomus saltatrix*.

Bluefish Committee means the Bluefish FMP Review and Monitoring Committee of the MAFMC.

Bonito means *Sarda sarda*.

Bushel (bu) means a standard unit of volumetric measurement deemed to hold 1.88 ft³ (53.24 L) of surf clams or ocean quahogs in the shell.

Cage means a container with a standard unit of volumetric measurement containing 60 ft³ (1,700 L). The outside dimensions of a standard cage generally are 3 ft (91 cm) wide, 4 ft (122 cm) long, and 5 ft (152 cm) high.

Chafing gear or *cookies*, with respect to the scallop fishery, means steel, rubberized or other types of donut rings, disks, washers, twine, or other material attached to or between the steel rings of a sea scallop dredge.

Charter or *party boat* means any vessel that carries passengers for hire to engage in recreational fishing and, with respect to multispecies, that is not fishing under a DAS.

Combination vessel means a vessel that has fished in any one calendar year with scallop dredge gear and otter trawl gear during the period 1988 through 1990, and that is eligible for an allocation of individual DAS under the NE Multispecies FMP and has applied for or been issued a limited access scallop permit.

Commercial fishing or *fishing commercially* means fishing that is intended to, or results in, the barter, trade, transfer, or sale of fish.

Commission means the Atlantic States Marine Fisheries Commission.

Conger eel means *Conger oceanicus*.

Cunner means *Tautoglabrus adspersus*.

Council means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries, or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; the summer flounder, scup, and black sea bass fisheries; and the Atlantic bluefish fishery.

Day(s)-at-Sea (DAS), with respect to the NE multispecies and scallop fisheries, except as described in § 648.82(k)(1)(v), means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species or scallops.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part.

Dealer code means a confidential five-digit number assigned to each dealer required to submit purchases using the IVR system for the purpose of maintaining the integrity of the data reported through the IVR system.

Dredge or *dredge gear*, with respect to the scallop fishery, means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can be or is used in the harvest of scallops.

Dredge bottom, with respect to scallops, means the rings and links found

between the bail of the dredge and the club stick, which, when fishing, would be in contact with the sea bed. This includes the triangular shaped portions of the ring bag commonly known as "diamonds."

Dredge top, with respect to the scallop fishery, means the mesh panel in the top of a dredge and immediately adjacent rings and links found between the bail of the dredge, the club stick, and the two side panels. The bail of the dredge is the rigid structure of the forward portion of the dredge that connects to the warp and holds the dredge open. The club stick is the rigid bar at the tail of the dredge bag that is attached to the rings.

Dredge vessel, with respect to the scallop fishery, means any fishing vessel that is equipped for fishing using dredge gear and that is capable of catching scallops.

Exempted gear, with respect to the NE multispecies fishery, means gear that is deemed to be not capable of catching NE multispecies and includes: Pelagic hook and line, pelagic longline, spears, rakes, diving gear, cast nets, tongs, harpoons, weirs, dipnets, stop nets, pound nets, pelagic gillnets, pots and traps, purse seines, shrimp trawls (with a properly configured grate as defined under this part), surf clam and ocean quahog dredges, and midwater trawls.

Fishing trip or *trip* means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing year means:

(1) For the scallop fishery, from March 1 through the last day of February of the following year.

(2) For the NE multispecies fishery, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

Flatfish gillnets means gillnets that are either constructed with no floats on the float line, or that are constructed with floats on the float line and that have tie-down twine between the float line and the lead line not more than 48 inches (18.90 cm) in length and spaced not more than 15 feet (4.57 m) apart.

FMP means fishery management plan.

Fourspot flounder means *Paralichthys oblongus*.

Gillnet gear capable of catching multispecies means all gillnet gear except pelagic gillnet gear specified at §648.81(g)(2)(ii) and pelagic gillnet gear that is designed to fish for and is used to fish for or catch tunas, swordfish, and sharks.

Gross registered tonnage (GRT) means the gross registered tonnage specified on the USCG documentation for a vessel.

Hagfish means *Myxine glutinosa*.

Handline or *handline gear* means fishing gear that is released by hand and consists of one main line to which is attached no more than two leaders for a total of no more than three hooks. Handlines are retrieved only by hand, not by mechanical means.

Harbor porpoise means *Phocoena phocoena*.

Harbor Porpoise Review Team (HPRT) means a team of scientific and technical experts appointed by the NEFMC to review, analyze, and propose harbor porpoise take mitigation alternatives.

Herring means Atlantic herring, *Clupea harengus*, or blueback herring, *Alosa aestivalis*.

Hickory shad means *Alosa mediocris*.

Hook gear means fishing gear that is comprised of a hook or hooks attached to a line and includes, but is not limited to, longline, setline, jigs, troll line, rod and reel, and line trawl.

Illex means *Illex illecebrosus* (short-finned or summer squid).

IVR system means the Interactive Voice Response dealer reporting system established by the Regional Administrator for the purpose of monitoring dealer purchases.

John Dory means *Zenopsis conchifera*.

Land means to begin offloading fish, to offload fish, or to enter port with fish.

Liner means a piece of mesh or any other material rigged inside or outside the main or outer net or dredge that restricts the mesh or ring size or otherwise reduces escapement.

Link, with respect to the sea scallop fishery, means the material, usually made of a 3/8-inch (10-mm) or 7/16-inch (11-mm) diameter metal rod, that joins

two adjacent rings within the ring bag of a dredge.

Little tunny means *Euthynnus alleteratus*.

Loligo means *Loligo pealei* (long-finned or bone squid).

Longhorn sculpin means *Myoxocephalus octodecimspinosus*.

Longline gear means fishing gear that is or is designed to be set horizontally, either anchored, floating, or attached to a vessel, and that consists of a main or ground line with three or more gangions and hooks.

Maine bushel means a standard unit of volumetric measurement equal to 1.2445 cubic feet (35.24 L) of ocean quahogs in the shell.

Maine mahogany quahog zone means the area bounded on the east by the U.S.-Canada maritime boundary, on the south by a straight line at 43°50' N. latitude, and on the north and west by the shoreline of Maine.

Menhaden means Atlantic menhaden, *Brevoortia tyrannus*.

Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

Mobile gear means trawls, beam trawls, and dredges that are designed to maneuver with that vessel.

Monkfish or *anglerfish* means *Lophius americanus*.

Mullet means any species in the family Mugilidae.

Multispecies frames, also known as multispecies racks, means the remains of the multispecies finfish after it has been filleted or processed, not including the fillet.

Multispecies Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC to review, analyze, and recommend adjustments to the measurement measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Region Office, NEFSC, the USCG, an industry representative, and no more than two representatives, appointed by the Commission, from affected states.

NAFO means Northwest Atlantic Fisheries Organization.

NAFO Convention Area means the waters of the Northwest Atlantic Ocean north of 35°00' N. lat. and west of a line extending due north from 35°00' N. lat. and 42°00' W. long. to 59°00' N. lat., thence due west to 44°00' W. long., and thence due north to the coast of Greenland and the waters of the Gulf of St. Lawrence, Davis Strait and Baffin Bay south of 78°10' N. lat.

NAFO Regulatory Area means the part of the NAFO Convention Area which lies beyond the 200-mile zone of the coastal states.

NEFSC means the Northeast Fisheries Science Center, NMFS.

Net tonnage (NT) means the net tonnage specified on the USCG documentation for a vessel.

Non-exempt gillnet fishery means a fishery which uses gillnet gear capable of catching multispecies.

Non-exempt species means species of fish not included under the GOM/GB and SNE Regulated Mesh Area exempted fisheries, as specified in §648.80(a)(3), (a)(4), (a)(8) through (13), (b)(3)(i) and (ii), (b)(5) through (8), and (d), (e), (h), and (i).

Nonregulated multispecies means the subset of Northeast multispecies that includes silver hake, red hake and ocean pout.

Northeast (NE) multispecies or multispecies means the following species:

American plaice—*Hippoglossoides platessoides*.

Atlantic cod—*Gadus morhua*.

Haddock—*Melanogrammus aeglefinus*.

Ocean Pout—*Macrozoarces americanus*.

Pollock—*Pollachius virens*.

Redfish—*Sebastes fasciatus*.

Red hake—*Urophycis chuss*.

Silver hake (whiting)—*Merluccius bilinearis*.

White hake—*Urophycis tenuis*.

Windowpane flounder—*Scophthalmus aquosus*.

Winter flounder—*Pleuronectes americanus*.

Witch flounder—*Glyptocephalus cynoglossus*.

Yellowtail flounder—*Pleuronectes ferrugineus*.

Northern shrimp means *Pandalus borealis*.

Ocean quahog means the species *Arctica islandica*.

Offload or *offloading* means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel. For purposes of the surf clam and ocean quahog fishery, it means to separate physically a cage from a vessel, such as by removing the

slings or wire used to remove the cage from the harvesting vessel.

Operator means the master, captain, or other individual on board a fishing vessel, who is in charge of that vessel's operations.

Out of the multispecies fishery or DAS program means the period of time during which a vessel is absent from port and is not fishing for regulated species under the NE multispecies DAS program.

Pair trawl or pair trawling means to tow a single net between two vessels.

Pelagic hook and line gear means handline or rod and reel gear that is designed to fish for, or that is being used to fish for, pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.

Pelagic longline gear means fishing gear that is not fixed, nor designed to be fixed, nor anchored to the bottom and that consists of monofilament main line (as opposed to a cable main line) to which gangions are attached.

Personal use, with respect to the surf clam or ocean quahog fishery, means harvest of surf clams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bu (106.48 L) per person per fishing trip.

Person who receives bluefish for commercial purposes means any person (excluding representatives of governmental agencies) engaged in the sale, barter, or trade of bluefish received from a fisherman, or one who transports bluefish from a fisherman.

Postmark means independently verifiable evidence of date of mailing, such as U.S. Postal Service postmark, United Parcel Service (U.P.S.) or other private carrier postmark, certified mail receipt, overnight mail receipt, or receipt received upon hand delivery to an authorized representative of NMFS.

Prior to leaving port means prior to departing from the last dock or mooring in port to engage in fishing, including the transport of fish to another port.

Processor means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

Purse seine gear means an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear, or any net designed to be, or capable of being, used in such fashion.

Quota-managed species means any species of finfish managed under this part by an annual or seasonal quota, by annual target or actual TAC, or by DAH limits.

Recreational fishing means fishing that is not intended to, nor results in the barter, trade, or sale of fish.

Recreational fishing vessel, with respect to the scup fishery, means any vessel from which no fishing other than recreational fishing is conducted. Charter and party boats are considered recreational fishing vessels for purposes of the scup minimum size requirement.

Regional Administrator means the Administrator, Northeast Region, NMFS, or a designee.

Regulated fishery means any fishery of the United States which is regulated under the Magnuson-Stevens Act.

Regulated species means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Reporting month means the period of time beginning at 0001 hours local time on the first day of each calendar month and ending at 2400 hours local time on the last day of each calendar month.

Reporting week means the period of time beginning at 0001 local time on Sunday and ending at 2400 hours local time the following Saturday.

Re-rig or re-rigged means physical alteration of the vessel or its gear in order to transform the vessel into one capable of fishing commercially for a species in the applicable fishery.

Rigged hooks means hooks that are baited, or only need to be baited, in order to be fished. Unsecured, unbaited hooks and gangions are not considered to be rigged.

Rockhopper and roller gear means trawl gear configured with disks, rollers, or other similar shaped devices that are attached to the bottom belly of the trawl, contact the sea bottom, and that are designed to raise the bottom panel of the trawl off the ocean

bottom so as to enable the gear to be fished on hard bottom.

Rod and reel means a hand-held (including rod holder) fishing rod with a manually operated reel attached.

Roundfish gillnets means gillnets that are constructed with floats on the float line and that have no tie-down twine between the float line and the lead line.

Runaround gillnet or encircling gillnet means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than 1/4 the length of the net or with an opening greater than 1/4 the length of the net, if the opening is obstructed in any fashion.

Scallop dredge vessel means any fishing vessel, other than a combination vessel, that uses or is equipped to use scallop dredge gear.

Scup means *Stenotomus chrysops*.

Scup Monitoring Committee means a committee made up of staff representative of the MAFMC, NEFMC, South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NEFSC, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Scup pot or trap means a pot or trap used in catching and retaining scup.

Sea Scallop Plan Development Team (PDT) means a team of technical experts appointed by the NEFMC.

Sea raven means *Hemitripterus americanus*.

Searobin means any species of the family Triglidae.

Shucking or to shuck means opening or to open a scallop, surf clam, or ocean quahog and removing the meat or the adductor muscle from the shell.

Shucking machine means any mechanical device that automatically removes the meat or the adductor muscle from a scallop, surf clam, or ocean quahog shell.

Sink gillnet or bottom-tending gillnet means with respect to the NE multispecies fishery, any gillnet, anchored or otherwise, that is designed to be, or is fished on or near the bottom in the lower third of the water column.

Skate means any species of the family Rajidae.

Smooth dogfish means *Mustelis canis*.

Sorting machine means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

Spiny dogfish means *Squalus acanthias*.

Spot means *Leiostomus xanthurus*.

Square mesh, with respect to the NE multispecies fishery, means mesh in which the horizontal bars of the mesh run perpendicular to the long axis of the net so when the net is placed under a strain the mesh remains open to a square-like shape. Square mesh can be formed by hanging diamond mesh “on the square,” if the resulting mesh conforms with the above description of square mesh.

Squid means *Loligo pealei* or *Illex illecebrosus*.

Standard tote means a box typically constructed of plastic, designed to hold 100 lb (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 L, or a volume of not more than 4,320 cubic in (2.5 cubic ft or 70.79 cubic cm).

Substantially similar harvesting capacity means the same or less GRT and vessel length.

Summer flounder means *Paralichthys dentatus*.

Summer Flounder Monitoring Committee means a committee made up of staff representatives of the MAFMC, NEFMC, and SAFMC, the NMFS Northeast Regional Office, the NEFSC, the Southeast Science Center, and the Commission. The MAFMC Executive Director or a designee chairs the committee.

Surf clams means Atlantic surf clams of the species *Spisula solidissima*.

Swordfish means *Xiphias gladius*.

Target total allowable catch (TAC) means the annual domestic harvest targets for regulated species.

Tautog (blackfish) means *Tautoga onitas*.

Tied up to the dock, with respect to NE multispecies, means to tie-up at a dock, on a mooring, or in a harbor.

Tilefish means *Lopholatilus chamaeleonticeps*.

Total Length (TL) means the straight-line distance from the tip of the snout to the end of the tail (caudal fin) while the fish is lying on its side.

Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel.

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls, otter trawls, and Danish and Scottish seine gear.

Trawl sweep means the total length of the footrope on a trawl net that is directly attached to the webbing of a net.

Under construction means that the keel had been laid or the vessel was under written agreement for construction or the vessel was under written contract for purchase.

Upon returning to port, for purposes of the call-in notification system for the NE multispecies fishery, means the first point when a vessel ties up at a dock or mooring in a port at the end of a fishing trip.

Vessel length means the length specified on the USCG documentation for a vessel or on the state registration for a vessel not required to be documented under title 46 U.S.C., if the state length is verified by an authorized officer or NMFS official.

Vessel Monitoring System (VMS) means a vessel monitoring system as set forth in § 648.9 and approved by NMFS for use by scallop and NE multispecies vessels, as required by this part.

VMS unit means a device installed on board a vessel used for vessel monitoring and transmitting the vessel's position as required by this part.

Weakfish means *Cynoscion regalis*.

Whiting means *Merluccius bilinearis*.

[61 FR 34968, July 3, 1996, as amended at 61 FR 39910, July 31, 1996; 61 FR 43424, Aug. 23, 1996; 61 FR 49277, Sept. 19, 1996; 61 FR 56126, Oct. 31, 1996; 61 FR 58464, Nov. 15, 1996; 62 FR 2620, Jan. 17, 1997; 62 FR 9379, Mar. 3, 1997; 62 FR 10748, Mar. 10, 1997; 62 FR 13299, Mar. 20, 1997; 62 FR 14646, Mar. 27, 1997; 62 FR 15385, Apr. 1, 1997; 62 FR 49148, Sept. 19, 1997; 62 FR 51381, Oct. 1, 1997; 63 FR 11593, Mar. 10, 1998; 63 FR 27484, May 19, 1998; 63 FR 40377, July 29, 1998; 63 FR 52640, Oct. 1, 1998; 63 FR 58329, Oct. 30, 1998; 64 FR 24072, May 5, 1999; 64 FR 42048, Aug. 3, 1999]

§ 648.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705.

(b) Nothing in these regulations supersedes more restrictive state man-

agement measures for any of the species referenced in § 648.1 and, for Atlantic salmon, more restrictive local management measures.

§ 648.4 Vessel and individual commercial permits.

(a) *Fishery specific permit information.*
 (1) *NE multispecies vessels.* Except for vessels that have been issued a valid High Seas Fishing Compliance permit, have declared their intent to fish, and fish exclusively in the NAFO Regulatory Area as provided in § 648.17, any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess, or land multispecies finfish in or from the EEZ. Multispecies frames used as, or to be used as, bait on a vessel fishing exclusively with pot gear are deemed not to be multispecies finfish for purposes of this part provided that there is a receipt for the purchase of those frames on board the vessel.

(i) *Limited access multispecies permits—*
 (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.

(D) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

(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 vessel'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.

(G) *Consolidation restriction.* Limited access permits and DAS allocations may not be combined or consolidated.

(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) *Limited access permit restrictions.* (1) A vessel may be issued a limited access multispecies permit in only one category during a fishing year. Vessels may not change limited access multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(I)(2) of this section. A vessel issued a limited access multispecies hook-gear permit may not change its limited access permit category at any time.

(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)(1) 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.

(3) With the exception of combination vessels, sea scallop dredge vessels are not eligible for limited access multispecies permits.

(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.

(ii) *Open access permits.* A vessel of the United States that has not been issued a limited access multispecies permit is eligible for and may be issued an open access multispecies handgear, charter/party or nonregulated multispecies permit and may fish for, possess and land multispecies finfish subject to the restrictions in §648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess and land multispecies finfish subject to the restrictions in §648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

(2) *Atlantic sea scallop vessels*— Any vessel of the United States that fishes for, possesses, or lands Atlantic sea scallops in quantities greater than 40 lb (18.14 kg) shucked, or 5 bu (176.2 L) of in-shell scallops per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid scallop permit.

(i) *Limited access scallop permits.* Any vessel of the United States that possesses or lands more than 400 lb (181.44 kg) of shucked, or the equivalent amount of in-shell scallops (50 bu (176.2 L)) per trip, except vessels that fish exclusively in state waters for scallops, must have been issued and carry on board a valid limited access scallop permit.

(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.

(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)(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 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. 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.

(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) *Percentage ownership restrictions.* (I) 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)(I) 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.

(i) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, more than 40 lb (18.14 kg) and less than or including 400 lb (181.44 kg) of shucked meats, or the equivalent amount of in-shell scallops (5 and 50 bu (176.2 L and 176.2 L), respectively), except vessels that fish exclusively in state waters for scallops, must carry on board a valid general scallop permit.

(3) *Summer flounder vessels.* Any vessel of the United States that fishes for or retains summer flounder in the EEZ must have been issued and carry on board a valid summer flounder permit, except for vessels other than party or charter vessels that observe the possession limit set forth in § 648.105.

(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.

(ii) *Party and charter boat permits.* Any party or charter boat is eligible for a permit to fish for summer flounder, other than a summer flounder moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits specified in § 648.105.

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.104(b)(1) must apply to the Regional Administrator under paragraph (c) of this section at least 7 days prior to the date they wish the permit to become effective. The applicant must mark "Exemption Permit Request" on the permit application at the top. A permit issued under this paragraph (a)(3)(iii) does not meet the requirements of paragraph (a)(3)(i) of this section, but is subject to the other provisions of this section. Persons issued an exemption permit must surrender it to the Regional Administrator at least 1 day prior to the date they wish to fish

not subject to the exemption. The Regional Administrator may impose temporary additional procedural requirements by publishing a notification in the FEDERAL REGISTER.

(4) *Surf clam and ocean quahog vessels.* Any vessel of the United States that fishes for surf clams or ocean quahogs, except vessels taking surf clams and ocean quahogs for personal use or fishing exclusively within state waters, must have been issued and carry on board a valid surf clam or ocean quahog permit, respectively.

(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.

(1) 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.

(ii) [Reserved]

(5) *Mackerel, squid, and butterfish vessels.* Any vessel of the United States, including party and charter vessels, must have been issued and carry on board a valid vessel permit to fish for, possess, or land Atlantic mackerel, squid, or butterfish in or from the EEZ.

(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.

(ii) *Squid/butterfish incidental catch permit*. Any vessel of the United States may obtain a permit to fish for or retain up to 2,500 lb (1.13 mt) of *Loligo* squid or butterflyfish, or up to 5,000 lb (2.27 mt) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(iii) *Atlantic mackerel permit*. Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ.

(iv) *Party and charter boat permits*. The owner of any party or charter boat must obtain a permit to fish for or retain in or from the EEZ mackerel, squid, or butterflyfish while carrying passengers for hire.

(6) *Scup vessels*. Beginning on January 1, 1997, and subject to the eligibility requirements specified in paragraphs (a)(6)(i) and (a)(6)(ii) of this section, the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for or retain scup for sale, barter or trade, in or from the EEZ

north of 35°15.3' N. lat. Any vessel, other than a party or charter boat, that observes the possession limit restrictions established pursuant to, and the prohibition on sale specified in, § 648.125 is exempt from the permit requirement.

(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.

(ii) *Party and charter boat permit*. Any party or charter boat is eligible for a permit to fish for scup, other than a scup moratorium permit, if it is carrying passengers for hire. Such vessel must observe the possession limits established pursuant to, and the prohibitions on sale specified in, § 648.125.

(7) *Black sea bass vessels*. Beginning June 1, 1997, any vessel of the United States that fishes for or retains black sea bass in or from the EEZ north of 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, must have been issued and carry on board a valid black sea bass moratorium permit, except for vessels other than party or charter vessels that observe the possession limit established pursuant to § 648.145.

(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.

(ii) *Party and charter boat permit*. The owner of any party or charter boat must obtain a permit to fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, while carrying passengers for hire.

(8) *Atlantic bluefish individual permits*. Any person selling bluefish harvested in the EEZ must have either a valid permit issued under this part or a valid State of landing permit to sell bluefish.

(b) *Permit conditions*. Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or land-

ward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium permit must also agree not to land summer flounder, scup, or black sea bass, respectively, in any state after NMFS has published a notification in the FEDERAL REGISTER stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, or black sea bass, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3'

N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3' N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be re-issued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

(c) *Permit applications*—(1) *General*. Applicants for a permit under this section must submit a completed application on an appropriate form obtained from the Regional Administrator. The application must be signed and submitted to the Regional Administrator at least 30 days before the date on which the applicant desires to have the permit made effective. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. Vessel owners who are eligible to apply for limited access or moratorium permits under this part shall provide information with the application sufficient for the Regional Administrator to determine whether the vessel meets the applicable eligibility requirements specified in this section.

(2) *Vessel permit information requirements*. (i) With the exception of Atlantic bluefish permits, the requirements for which are described in paragraph (c)(3) of this section, an application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the

current state registration; a copy of the vessel's current party/charter boat license (if applicable), home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category, if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

(ii) An application for an initial limited access multispecies hook-gear permit must also contain the following information:

(A) If the engine horsepower was changed or a contract to change the engine horsepower had been entered into prior to July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit before July 1, 1996, sufficient documentation to ascertain the different engine horsepower. However, the engine replacement must be completed within 1 year of the date on which the contract was signed.

(B) If the length, GRT, or NT was changed or a contract to change the length, GRT, or NT had been entered into prior to July 1, 1996, such that it is different from that stated in the vessel's most recent application for a Federal fisheries permit, sufficient documentation to ascertain the different length, GRT, or NT. However, the upgrade must be completed within 1 year from the date on which the contract was signed.

(iii) An application for a limited access multispecies permit must also contain the following information:

(A) If applying for a limited access multispecies Combination Vessel permit or Individual DAS category permit, or if opting to use a VMS, a copy of the vendor installation receipt from a NMFS-approved VMS vendor as described in § 648.9.

(B) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). Vessel owners electing a Day gillnet designation must indicate the number of gillnet tags that they are requesting and must include a check for the cost of the tags. A permit holder letter will be sent to all eligible gillnet vessels informing them of the costs associated with this tagging requirement and directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(iv) An application for a limited access scallop permit must also contain the following information:

(A) For every person named by applicants for limited access scallop permits pursuant to paragraph (c)(2)(i) of this section, the names of all other vessels in which that person has an ownership interest and for which a limited access scallop permit has been issued or applied for.

(B) If applying for full-time or part-time limited access scallop permit, or if opting to use a VMS unit, though not required, a copy of the vendor installation receipt from a NMFS-approved VMS vendor as described in § 648.9.

(C) If applying to fish under the small dredge program set forth under § 648.51(e), an annual declaration into the program.

(v) An application for a surf clam and ocean quahog permit must also contain the pump horsepower.

(3) *Atlantic bluefish individual commercial permit information requirements.* In

addition to the information specified in paragraph (c)(1) of this section, an application for an Atlantic bluefish individual commercial permit also must contain at least the following information, and any other information required by the Regional Administrator: The applicant's name; mailing address; telephone number; height; weight; hair color; and eye color; if the applicant represents a corporation, a copy of the current Certificate of Incorporation; and percentage of annual income derived from the sale of bluefish.

(d) *Fees.* The Regional Administrator may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Administrator, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (e) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue a permit within 30 days of receipt of the application, unless the application is deemed incomplete for the following reasons:

(i) The applicant has failed to submit a complete application. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received and the applicant has submitted all applicable reports specified in § 648.7;

(ii) The application was not received by the Regional Administrator by the applicable deadline set forth in this section;

(iii) The applicant and applicant's vessel failed to meet all applicable eligibility requirements set forth in this section;

(iv) The applicant applying for a limited access multispecies combination vessel or individual DAS permit, a full-

time or part-time limited access scallop permit, or electing to use a VMS, has failed to meet all of the VMS requirements specified in §§648.9 and 648.10; or

(v) The applicant has failed to meet any other application requirements stated in this part.

(2) *Incomplete applications.* Upon receipt of an incomplete or improperly executed application for any permit under this part, the Regional Administrator shall notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Change in permit information.* Any change in the information specified in paragraphs (c)(2) or (c)(3) of this section must be submitted by the applicant in writing to the Regional Administrator within 15 days of the change, or the permit is void.

(g) *Expiration.* A permit expires upon the renewal date specified in the permit.

(h) *Duration.* A permit will continue in effect unless it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as specified in paragraph (f) of this section. However, the Regional Administrator may authorize the continuation of a permit if the new owner so requests. Applications for permit continuations must be addressed to the Regional Administrator.

(i) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(j) *Reissuance.* A permit may be reissued by the Regional Administrator when requested in writing, stating the need for reissuance, the name of the vessel (if applicable), and the fishing permit number assigned. An application for the reissuance of a permit will not be considered a new application. The fee for a reissued permit shall be the same as for an initial permit.

(k) *Transfer.* A permit issued under this part is not transferable or assignable. A permit will be valid only for the

fishing vessel, owner and/or person for which it is issued.

(l) *Display.* A vessel permit must be carried, at all times, on board the vessel for which it is issued and shall be subject to inspection upon request by any authorized officer. A person issued a permit under this section must be able to present the permit for inspection when requested by an authorized officer. Permits must be maintained in legible condition.

(m) *Sanctions.* The Assistant Administrator may suspend, revoke, or modify, any permit issued or sought under this section. Procedures governing enforcement-related permit sanctions or denials are found at subpart D of 15 CFR part 904.

[61 FR 34968, July 3, 1996, as amended at 61 FR 39910, July 31, 1996; 61 FR 43424, Aug. 23, 1996; 61 FR 49277, Sept. 19, 1996; 61 FR 56126, Oct. 31, 1996; 61 FR 58464, Nov. 15, 1996; 62 FR 13299, Mar. 20, 1997; 62 FR 14646, Mar. 27, 1997; 62 FR 15386, Apr. 1, 1997; 62 FR 27984, May 22, 1997; 62 FR 28642, May 27, 1997; 62 FR 51381, Oct. 1, 1997; 62 FR 63875, Dec. 3, 1997; 63 FR 11593, Mar. 10, 1998; 63 FR 27484, May 19, 1998; 63 FR 32144, June 12, 1998; 63 FR 58329, Oct. 30, 1998; 64 FR 8265, Feb. 19, 1999]

§648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, and, as of January 1, 1997, mackerel, squid, or butterfish, or scup, and, as of June 1, 1997, black sea bass, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section, and carry on board, a valid operator's permit. An operator permit issued pursuant to part 649 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

(b) *Operator permit application.* Applicants for a permit under this section must submit a completed application on an appropriate form provided by the Regional Administrator. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Administrator will notify the

applicant of any deficiency in the application, pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under this section must agree as a condition of this permit that the operator and vessel's fishing, catch, crew size, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) are subject to all requirements of this part while fishing in the EEZ or on board a vessel for which a permit is issued under §648.4, unless exempted from such requirements under §648.12. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree, as a condition of this permit, that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal fisheries permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional); and signature of the applicant. The applicant must also provide two recent (no more than 1 year old), color, passport-size photographs.

(e) *Fees.* Same as §648.4(d).

(f) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Administrator shall issue an operator's permit within 30 days of receipt of a completed application, if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of no-

tification, the application will be considered abandoned.

(g) *Expiration.* Same as §648.4(g).

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Administrator as specified in paragraph (k) of this section.

(i) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal operator permit number assigned. An applicant for a reissued permit must also provide two recent, color, passport-size photos of the applicant. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in permit application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Administrator within 15 days of the change in information. If written notice of the change in information is not received by the Regional Administrator within 15 days, the permit is void.

(l) *Alteration.* Same as §648.4(i).

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer or NMFS official.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be aboard a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an

individual with a valid operator's permit issued under this section.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996]

§648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. As of January 1, 1997, all mackerel, squid, and butterfish dealers and all scup dealers, and, as of June 1, 1997, all black sea bass dealers must have been issued under this section, and have in their possession, a valid permit for these species.

(b) *Dealer/processor permit applications.* Same as §648.5(b).

(c) *Information requirements.* Applications must contain at least the following information, and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the Partnership Agreement and the names and addresses of all partners if the business is a partnership.

(d) *Fees.* Same as §648.4(d).

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Administrator will issue a permit at any time during the fishing year to an applicant, unless the applicant fails to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in §648.7 during the 12 months immediately preceding the application. Upon receipt of an incomplete or improperly executed application, the Regional Administrator will notify the applicant of the deficiency in the application. If the appli-

cant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(f) *Expiration.* Same as §648.4(g).

(g) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Administrator as required by paragraph (j) of this section.

(h) *Reissuance.* Reissued permits, for otherwise valid permits, may be issued by the Regional Administrator when requested in writing by the applicant, stating the need for reissuance and the Federal dealer permit number assigned. An application for a reissued permit will not be considered a new application. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Same as §648.5(k).

(k) *Alteration.* Same as §648.4(i).

(l) *Display.* Same as §648.5(m).

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Same as §648.4(m).

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996]

§648.7 Recordkeeping and reporting requirements.

(a) *Dealers—(1) Detailed weekly report.* Federally permitted dealers must submit to the Regional Administrator or to the official designee a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator and a report of all fish purchases, except surf clam and ocean quahog dealers or processors who are required to report only surf clam and ocean quahog purchases.

If authorized in writing by the Regional Administrator, dealers may submit reports electronically or through other media. The following information, and any other information required by the Regional Administrator, must be provided in the report:

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multi-species, Atlantic mackerel, squid and butterfish dealers must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator. All report forms must be signed by the dealer or other authorized individual. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

(ii) Surf clam and ocean quahog processors and dealers must provide: Date of purchase or receipt; name, permit number and mailing address; number of bushels by species; cage tag numbers; allocation permit number; vessel name and permit number; price per bushel by species. Dealers must also report disposition of surf clams or ocean quahogs, including name and permit number of recipients. Processors must also report size distribution and meat yield per bushel by species.

(2) *Weekly IVR system reports.* (i) Federally permitted dealers purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other information required by the Regional Administrator, to the Regional Administrator or to an official

designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species; reporting week in which species were purchased; and state of landing for each species purchased. If no purchases of quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section were made during the week, a report so stating must be submitted through the IVR system in accordance with paragraph (f) of this section.

(ii) The Regional Administrator may defer any quota-managed species from the IVR system reporting requirements if landings are not expected to reach levels that would cause the applicable target exploitation rate corresponding to a given domestic annual harvest limit, target or actual TAC, or annual or seasonal quota specified for that species to be exceeded. The Regional Administrator shall base any such determination on the purchases reported, by species, in the comprehensive written reports submitted by dealers and other available information. If the Regional Administrator determines that any quota-managed species should be deferred from the weekly IVR system reporting requirements, the Regional Administrator shall publish notification so stating in the FEDERAL REGISTER. If data indicate that landing levels have increased to an extent that this determination ceases to be valid, the Regional Administrator shall terminate the deferral by publishing notification in the FEDERAL REGISTER.

(3) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multi-species, Atlantic mackerel, squid, and butterfish dealers must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surf clam and ocean quahog processors and dealers must provide the average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; an estimate, for the next year, of such processing capacities; and total payroll for surf clam and ocean quahog processing, by month. If the plant processing capacities required to be reported in this paragraph (a)(3)(ii) change more than 10 percent during any year, the processor shall notify the Regional Administrator in writing within 10 days after the change.

(b) *Vessel owners*—(1) *Fishing Vessel Trip Reports*—(i) *Owners of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, or Atlantic mackerel, squid, and butterfish permits.* The owner or operator of any vessel issued a permit for summer flounder, scup, black sea bass, Atlantic sea scallops, NE multispecies, Atlantic mackerel, squid or butterfish must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, vessel owners or operators may submit reports electronically, for example by using a VMS or other system. At least the following information, and any other information required by the Regional Administrator, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a party or charter boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds (or count, if a party or charter vessel), by species, of all spe-

cies landed or discarded; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

(ii) *Surf clam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surf clam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surf clam and ocean quahog fishing vessel permit, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Administrator, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surf clams and ocean quahogs discarded, and allocation permit number.

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information must be filled out before starting the next fishing trip. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surf clams or ocean quahogs. Log reports required by paragraph (b)(1)(iii) of this section must be filled out, except for information required but not yet ascertainable, before offloading or landing has begun. All information required in paragraph (b)(1)(iii) of this section must be filled out for each fishing trip by the end of each fishing trip.

(d) *Inspection.* All persons required to submit reports under this section, upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Administrator to make such inspections, must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based. At any time during or after a trip, owners and operators

must make immediately available for inspection the fishing log reports currently in use, or to be submitted.

(e) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. Copies of fishing log reports must be retained and available for review for 1 year after the date of the last entry on the log. Dealers must retain required reports and records at their principal place of business.

(f) *Submitting reports*—(1) *Dealer or processor reports.* (i) Detailed weekly trip reports, required by paragraph (a)(1) of this section, must be post-marked or received within 16 days after the end of each reporting week. If no fish are purchased during a reporting month, the report so stating required under paragraph (a)(1)(i) of this section must be postmarked or received within 16 days after the end of the reporting month.

(ii) Weekly IVR system reports required in paragraph (a)(2) of this section must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous reporting week.

(iii) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to §600.502) for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* Fishing log reports must be received or post-marked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which reports are to be submitted, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report stating so must be submitted.

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any summer flounder, or, as of January 1, 1997, mackerel, squid, or butterfish, or scup, or, as of June 1, 1997, black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) or (a)(2) of this section, as appli-

cable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

(g) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996; 62 FR 14646, Mar. 27, 1997; 63 FR 52640, Oct. 1, 1998; 63 FR 58329, Oct. 30, 1998]

§648.8 Vessel identification.

(a) *Vessel name and official number.* Each fishing vessel subject to this part and over 25 ft (7.6 m) in registered length must:

(1) Affix permanently its name on the port and starboard sides of the bow and, if possible, on its stern.

(2) Display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The official number is the USCG documentation number or the vessel's state registration number for vessels not required to be documented under title 46 U.S.C.

(b) *Numerals.* Except as provided in paragraph (d) of this section, the official number must be displayed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in registered length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 ft (7.6 m) in registered length. The registered length of a vessel, for purposes of this section, is that registered length set forth in USCG or state records.

(c) *Duties of owner.* The owner of each vessel subject to this part shall ensure that—

(1) The vessel's name and official number are kept clearly legible and in good repair.

(2) No part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number

from any enforcement vessel or aircraft.

(d) *Non-permanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The non-permanent markings must be displayed in conformity with the above requirements.

(e) *New Jersey surf clam or ocean quahog vessels.* Instead of complying with paragraph (a) of this section, surf clam or ocean quahog vessels licensed under New Jersey law may use the appropriate vessel identification markings established by that state.

§ 648.9 VMS requirements.

(a) *Approval.* The Regional Administrator will annually approve VMSs that meet the minimum performance criteria specified in paragraph (b) of this section. Any changes to the performance criteria will be published annually in the FEDERAL REGISTER and a list of approved VMSs will be published in the FEDERAL REGISTER upon addition or deletion of a VMS from the list. In the event that a VMS is deleted from the list, vessel owners that purchased a VMS unit that is part of that VMS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Administrator.

(b) *Minimum VMS performance criteria.* The basic required features of the VMS are as follows:

(1) The VMS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(2) The VMS shall be fully automatic and operational at all times, regardless of weather and environmental conditions, unless exempted under paragraph (c)(2) of this section.

(3) The VMS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nm

offshore and shall provide position accuracy to within 400 m (1,300 ft).

(4) The VMS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude.

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

(6) The VMS shall be capable of providing network message communications between the vessel and shore. The VMS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VMS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in a file format acceptable to NMFS.

(8) The VMS shall be capable of providing vessel locations relative to international boundaries and fishery management areas.

(9) The VMS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(c) *Operating requirements.* (1) All required VMS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, unless such vessel is exempted under paragraph (c)(2) of this section.

(2) *Power Down Exemption.* (i) Any vessel required to have on board a fully operational VMS unit at all times, as specified in paragraph (b)(2) of this section, is exempt from this requirement provided:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours; and

(B) A valid letter of exemption obtained pursuant to paragraph (c)(2)(ii)

of this section has been issued to the vessel and is on board the vessel and the vessel is in compliance with all conditions and requirements of said letter.

(ii) *Letter of Exemption*—(A) *Application*. A vessel owner may apply for a letter of exemption from the operating requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: Sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours; the location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (i.e., the time the VMS will be turned off and turned on again).

(B) *Issuance*. Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2)(ii)(A) of this section and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption was granted.

(d) *Presumption*. If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the trans-

mission that occurred while the vessel was declared out of the scallop fishery or NE multispecies fishery, as applicable, or was not at sea.

(e) *Replacement*. Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying that the new VMS unit is an operational, approved system as described under paragraph (a) of this section.

(f) *Access*. As a condition to obtaining a limited access scallop or multispecies permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS and location data obtained from its VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

(g) *Tampering*. Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or accuracy of computing the vessel's position fix.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14646, Mar. 27, 1997; 63 FR 58329, Oct. 30, 1998]

§ 648.10 DAS notification requirements.

(a) *VMS Demarcation Line*. The VMS Demarcation Line is defined by straight lines connecting the following coordinates in the order stated (a copy of a map showing the line is available from the Regional Administrator upon request):

VMS DEMARCATION LINE

Description	N. Lat.	W. Long.
1. Northern terminus point (Canada landmass)	45°03'	66°47'
2. A point east of West Quoddy Head Light	44°48.9'	66°56.1'
3. A point east of Little River Light	44°39.0'	67°10.5'
4. Whistle Buoy "8BI" (SSE of Baker Island)	44°13.6'	68°10.8'
5. Isle au Haut Light	44°03.9'	68°39.1'
6. Pemaquid Point Light	43°50.2'	69°30.4'
7. A point west of Halfway Rock	43°38.0'	70°05.0'
8. A point east of Cape Neddick Light	43°09.9'	70°34.5'
9. Merrimack River Entrance "MR" Whistle Buoy	42°48.6'	70°47.1'
10. Halibut Point Gong Buoy "1AHP"	42°42.0'	70°37.5'
11. Connecting reference point	42°40'	70°30'
12. Whistle Buoy "2" off Eastern Point	42°34.3'	70°39.8'
13. The Graves Light (Boston)	42°21.9'	70°52.2'
14. Minots Ledge Light	42°16.2'	70°45.6'
15. Farnham Rock Lighted Bell Buoy	42°05.6'	70°36.5'
16. Cape Cod Canal Bell Buoy "CC"	41°48.9'	70°27.7'

VMS DEMARCATION LINE—Continued

Description	N. Lat.	W. Long.
17. A point inside Cape Cod Bay	41°48.9'	70°05'
18. Race Point Lighted Bell Buoy "RP"	42°04.9'	70°16.8'
19. Peaked Hill Bar Whistle Buoy "2PH"	42°07.0'	70°06.2'
20. Connecting point, off Nauset Light	41°50'	69°53'
21. A point south of Chatham "C" Whistle Buoy	41°38'	69°55.2'
22. A point in eastern Vineyard Sound	41°30'	70°33'
23. A point east of Martha's Vineyard	41°22.2'	70°24.6'
24. A point east of Great Pt. Light, Nantucket	41°23.4'	69°57'
25. A point SE of Sankaty Head, Nantucket	41°13'	69°57'
26. A point west of Nantucket	41°15.6'	70°25.2'
27. Squibnocket Lighted Bell Buoy "1"	41°15.7'	70°46.3'
28. Wilbur Point (on Sconticut Neck)	41°35.2'	70°51.2'
29. Mishaum Point (on Smith Neck)	41°31.0'	70°57.2'
30. Sakonnet Entrance Lighted Whistle Buoy "SR"	41°25.7'	71°13.4'
31. Point Judith Lighted Whistle Buoy "2"	41°19.3'	71°28.6'
32. A point off Block Island Southeast Light	41°08.2'	71°32.1'
33. Shinnecock Inlet Lighted Whistle Buoy "SH"	40°49.0'	72°28.6'
34. Scotland Horn Buoy "S", off Sandy Hook (NJ)	40°26.5'	73°55.0'
35. Barnegat Lighted Gong Buoy "2"	39°45.5'	73°59.5'
36. A point east of Atlantic City Light	39°21.9'	74°22.7'
37. A point east of Hereford Inlet Light	39°00.4'	74°46'
38. A point east of Cape Henlopen Light	38°47'	75°04'
39. A point east of Fenwick Island Light	38°27.1'	75°02'
40. A point NE of Assateague Island (VA)	38°00'	75°13'
41. Wachapreague Inlet Lighted Whistle Buoy "A"	37°35.0'	75°33.7'
42. A point NE of Cape Henry	36°55.6'	75°58.5'
43. A point east of Currituck Beach Light	36°22.6'	75°48'
44. Oregon Inlet (NC) Whistle Buoy	35°48.5'	75°30'
45. Wimble Shoals, east of Chicamacomico	35°36'	75°26'
46. A point SE of Cape Hatteras Light	35°12.5'	75°30'
47. Hatteras Inlet Entrance Buoy "HI"	35°10'	75°46'
48. Ocracoke Inlet Whistle Buoy "OC"	35°01.5'	76°00.5'
49. A point east of Cape Lookout Light	34°36.5'	76°30'
50. Southern terminus point	34°35'	76°41'

(b) *VMS Notification.* Multispecies vessels issued an Individual DAS or Combination Vessel permit, scallop vessels issued a full-time or part-time limited access scallop permit, and scallop vessels issued an occasional limited access permit when fishing under the Georges Bank Sea Scallop Exemption Program specified in §648.58, or scallop vessels fishing under the small dredge program specified in §648.51(e), or vessels issued a limited access multispecies or scallop permit and whose owners elect to fish under the VMS notification of this paragraph (b), unless otherwise authorized or required by the Regional Administrator under §648.10(d), must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §648.9(b) or as modified in §648.9(a). Owners of such vessels must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS in-

stalled on board that meets those criteria. If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the an operational VMS unit that meets the criteria to be installed on board the vessel and for the owner to provide documentation of such installation to the Regional Administrator. Vessels that are required to or have elected to use a VMS unit shall be subject to the following requirements and presumptions:

(1) Vessels that have crossed the VMS Demarcation Line specified under paragraph (a) of this section are deemed to be fishing under the DAS program, unless the vessel's owner, or authorized representative declares the vessel out of the scallop or NE multispecies fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port.

(2) Part-time scallop vessels may not fish in the DAS allocation program unless they declare into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(3) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A change in status of a vessel cannot be made after the vessel leaves port or before it returns to port on any fishing trip.

(4) DAS for vessels that are under the VMS notification requirements of this paragraph (b) are counted beginning with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. A trip concludes and accrual of DAS ends with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port.

(5) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(1), (2), and (3) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS system.

(c) *Call-in notification.* Owners of vessels issued limited access multispecies permits who are participating in a DAS program and who are not required to provide notification using a VMS, owners of scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(H)(3) are subject to the following requirements:

(1) Prior to the vessel leaving port, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has

been received and a confirmation number is given by the Regional Administrator.

(2) The vessel's confirmation numbers for the current and immediately prior multispecies fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(3) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, port of landing and permit number, and that the vessel has ended a trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator.

(4) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181.44 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, shall be deemed in the DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by this paragraph (c).

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the FEDERAL REGISTER, or other appropriate means. From May 1, 1998, through April 30, 1999, multispecies vessels issued an Individual DAS or Combination Vessel (regarding the multispecies fishery) permit are temporarily authorized to use the call-in system of notification specified in paragraph (c) of this section.

(e) *Scallop vessels fishing under exemptions.* Vessels fishing under the exemptions provided by §648.54 (a) and/or (b)(1) must notify the Regional Administrator by VMS notification or by call-in notification as follows:

(1) *VMS notification.* (i) Notify the Regional Administrator, via their VMS, prior to the vessel's first trip under the state waters exemption program, that the vessel will be fishing exclusively in state waters; and

(ii) Notify the Regional Administrator, via their VMS, prior to the vessel's first planned trip in the EEZ, that the vessel is to resume fishing under the vessel's DAS allocation.

(2) *Call-in notification.* (i) Notify the Regional Administrator by calling the Regional Administrator and providing the following information at least 7 days prior to fishing under the exemption: Owner and caller name and address, vessel name and permit number, and beginning and ending dates of the exemption period.

(ii) Remain under the exemption for a minimum of 7 days.

(iii) If, under the exemption for a minimum of 7 days and wishing to withdraw earlier than the designated end of the exemption period, notify the Regional Administrator of early withdrawal from the program by calling the Regional Administrator, providing the vessel's name and permit number and the name and phone number of the caller, and stating that the vessel is withdrawing from the exemption. The vessel may not leave port to fish in the EEZ until 48 hours after notification of early withdrawal is received by the Regional Administrator.

(iv) The Regional Administrator will furnish a phone number for call-ins upon request.

(f) *Additional NE multispecies call-in requirements—(1) Spawning season call-in.* With the exception of vessels issued a valid Small Vessel category permit, vessels subject to the spawning season restriction described in §648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through either the VMS system or by calling and providing the following information: Vessel name and permit number, owner and caller name and

phone number and the commencement date of the 20-day period.

(2) *Gillnet call-in.* Vessels subject to the gillnet restriction described in §648.82(k)(1)(iv) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

(3) *Cod landing limit call-in.* (i) A vessel subject to the cod landing limit restriction specified in §648.86(b)(1)(i), that has not exceeded the allowable limit of cod based on the duration of the trip, must enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip.

(ii) A vessel subject to the cod landing limit restriction specified in §648.86(b)(1)(i) that exceeds or is expected to exceed the allowable limit of cod based on the duration of the trip must enter port no later than 14 DAS after starting a multispecies DAS trip and must report, upon entering port and before offloading, its hailed weight of cod under the separate call-in system specified in §648.86(b)(1)(ii)(B). Such vessel must remain in port, unless for transiting purposes as allowed in §648.86(b)(3), until sufficient time has elapsed to account for and justify the amount of cod on board in accordance with §648.86(b)(1)(ii), and may not begin its next fishing trip until the vessel has called-out of the multispecies DAS program to end its trip.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14647, Mar. 27, 1997; 62 FR 15386, Apr. 1, 1997; 62 FR 51381, Oct. 1, 1997; 63 FR 11593, Mar. 10, 1998; 63 FR 15329, Mar. 31, 1998; 63 FR 42592, Aug. 10, 1998; 63 FR 58329, Oct. 30, 1998; 64 FR 24072, May 5, 1999; 64 FR 31149, June 10, 1999]

EFFECTIVE DATE NOTE: At 64 FR 42044, Aug. 3, 1999, §648.10 was amended by suspending paragraphs (f)(3)(i) and (ii) and adding paragraph (f)(3)(iii), effective Aug. 3, 1999 through Jan. 30, 2000. For the convenience of the user, the added text is set forth as follows:

§648.10 DAS notification requirements.

* * * * *

(f) * * *

(3) * * *

(iii) A vessel subject to the cod landing limit restriction, specified in § 648.86(b)(1)(iv), must enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip.

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit sea scallop; or NE multispecies; or a moratorium permit for summer flounder, or, as of January 1, 1997, mackerel, squid, or butterfish, or scup, or as of June 1, 1997, black sea bass fisheries to carry a NMFS-approved sea sampler/observer. If requested by the Regional Administrator to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

(b) If requested by the Regional Administrator to carry an observer or sea sampler, it is the responsibility of the vessel owner to arrange for and facilitate observer or sea sampler placement. Owners of vessels selected for sea sampler/observer coverage must notify the appropriate Regional or Science and Research Director, as specified by the Regional Administrator, before commencing any fishing trip that may result in the harvest of resources of the respective fishery. Notification procedures will be specified in selection letters to vessel owners.

(c) The Regional Administrator may waive the requirement to carry a sea sampler or observer if the facilities on a vessel for housing the observer or sea sampler, or for carrying out observer or sea sampler functions, are so inadequate or unsafe that the health or safety of the observer or sea sampler, or the safe operation of the vessel, would be jeopardized.

(d) An owner or operator of a vessel on which a NMFS-approved sea sampler/observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the sea sampler/observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and

receipt of messages related to the sea sampler's/observer's duties.

(3) Provide true vessel locations, by latitude and longitude or loran coordinates, as requested by the observer/sea sampler, and allow the sea sampler/observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Notify the sea sampler/observer in a timely fashion of when fishing operations are to begin and end.

(5) Allow for the embarking and debarking of the sea sampler/observer, as specified by the Regional Administrator, ensuring that transfers of observers/sea samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea samplers/observers involved.

(6) Allow the sea sampler/observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(7) Allow the sea sampler/observer to inspect and copy any the vessel's log, communications log, and records associated with the catch and distribution of fish for that trip.

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or as of January 1, 1997, a scup moratorium permit or, as of June 1, 1997, a black sea bass moratorium permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, or black sea bass, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, or black sea bass, or other specimens taken by the vessel.

(f) NMFS may accept observer coverage funded by outside sources if:

(1) All coverage conducted by such observers is determined by NMFS to be in compliance with NMFS' observer guidelines and procedures.

(2) The owner or operator of the vessel complies with all other provisions of this part.

(3) The observer is approved by the Regional Administrator.

[61 FR 34968, July 3, 1996, as amended at 61 FR 43425, Aug. 23, 1996; 61 FR 58465, Nov. 15, 1996]

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfly), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), H (scup), or I (black sea bass), of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, and butterfly, the summer flounder, the scup, and the black sea bass fisheries.

(a) The Regional Administrator may not grant such an exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the management objectives of the respective FMP, the provisions of the Magnuson-Stevens Act, and other applicable law, and that granting the exemption will not:

- (1) Have a detrimental effect on the respective resources and fishery;
- (2) Cause any quota to be exceeded; or
- (3) Create significant enforcement problems.

(b) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of the respective FMP, except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Administrator to each vessel participating in the exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

(c) Experimental fishing for surf clams or ocean quahogs will not require an allocation permit.

[61 FR 58466, Nov. 15, 1996, as amended at 62 FR 37156, July 11, 1997]

§ 648.13 Transfers at sea.

(a) Only vessels issued a *Loligo* and butterflyfish moratorium or *Illex* moratorium permit under § 648.4(a)(5) and vessels issued a mackerel or squid/butterfish incidental catch permit and authorized in writing by the Regional Administrator to do so, may transfer or attempt to transfer *Loligo*, *Illex*, or butterflyfish from one vessel to another vessel.

(b) Vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(c) All persons are prohibited from transferring or attempting to transfer NE multispecies or scallops from one vessel to another vessel, except in accordance with paragraph (b) of this section.

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel.

[61 FR 34968, July 3, 1996, as amended at 62 FR 28642, May 27, 1997; 62 FR 63875, Dec. 3, 1997]

§ 648.14 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fail to report to the Regional Administrator within 15 days any change in the information contained in an applicable vessel, operator, or dealer/processor permit application.

(2) Falsify or fail to affix and maintain vessel markings as required by § 648.8.

(3) Make any false statement in connection with an application, declaration, or report under this part.

(4) Fail to comply in an accurate and timely fashion with the log report, reporting, record retention, inspection, and other requirements of § 648.7, or submit or maintain false information

in records and reports required to be kept or filed under § 648.7.

(5) Alter, erase, or mutilate any permit issued under this part.

(6) Alter, erase, mutilate, duplicate or cause to be duplicated, or steal any cage tag issued under this part.

(7) Tamper with, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate the VMS, VMS unit, or VMS signal required to be installed on or transmitted by vessel owners or operators required to use a VMS by this part.

(8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g).

(9) Refuse to carry an observer or sea sampler if requested to do so by the Regional Administrator.

(10) To refuse reasonable assistance to either a NMFS-approved observer or sea sampler conducting his or her duties aboard a vessel.

(11) Fish for surf clams or ocean quahogs in any area closed to surf clam or ocean quahog fishing.

(12) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(13) Purchase, possess or receive for a commercial purpose, or attempt to purchase possess or receive for a commercial purpose, any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part that fished exclusively in state waters, or unless otherwise specified in § 648.17.

(14) Produce, or cause to be produced, cage tags required under this part without written authorization from the Regional Administrator.

(15) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used.

(16) Tag a cage of surf clams with an ocean quahog cage tag or tag a cage of ocean quahogs with a surf clam cage tag.

(17) Possess, import, export, transfer, land, have custody or control of any species of fish regulated pursuant to this part that do not meet the minimum size provisions in this part, unless such species were harvested exclusively within state waters by a vessel not issued a permit under this part or whose permit has been surrendered in accordance with applicable regulations.

(18) Possess an empty cage to which a cage tag required by § 648.75 is affixed or possess any cage that does not contain surf clams or ocean quahogs and to which a cage tag required by § 648.75 is affixed.

(19) Land or possess, after offloading, any cage holding surf clams or ocean quahogs without a cage tag or tags required by § 648.75, unless the person can demonstrate the inapplicability of the presumptions set forth in § 648.75(h).

(20) Sell null and void tags.

(21) Shuck surf clams or ocean quahogs harvested in or from the EEZ at sea, unless permitted by the Regional Administrator under the terms of § 648.74.

(22) Receive for a commercial purpose other than transport, surf clams or ocean quahogs harvested in or from the EEZ, whether or not they are landed under an allocation under § 648.70, unless issued a dealer/processor permit under this part.

(23) Land unshucked surf clams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages.

(24) Land unshucked surf clams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean

quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(25) Fail to comply with any of the notification requirements specified in § 648.15(b).

(26) Fish for, retain, or land both surf clams and ocean quahogs in or from the EEZ on the same trip.

(27) Fish for, retain, or land ocean quahogs in or from the EEZ on a trip designated as a surf clam fishing trip under § 648.15(b), or fish for, retain, or land surf clams in or from the EEZ on a trip designated as an ocean quahog fishing trip under § 648.15(b).

(28) Fail to offload any surf clams or ocean quahogs harvested in the EEZ from a trip discontinued pursuant to § 648.15(b) prior to commencing fishing operations in waters under the jurisdiction of any state.

(29) Land or possess any surf clams or ocean quahogs harvested in or from the EEZ in excess of, or without, an individual allocation.

(30) Transfer any surf clams or ocean quahogs harvested in or from the EEZ to any person for a commercial purpose, other than transport, without a surf clam or ocean quahog processor or dealer permit.

(31) Fish for, possess, or land NE multispecies, unless:

(i) The NE multispecies are being fished for or were harvested in or from the EEZ by a vessel holding a valid multispecies permit under this part, or a letter under § 648.4(a)(1), and the operator on board such vessel has been issued an operator's permit and has a valid permit on board the vessel;

(ii) The NE multispecies were harvested by a vessel not issued a multispecies permit that fishes for NE multispecies exclusively in state waters;

(iii) The NE multispecies were harvested in or from the EEZ by a recreational fishing vessel; or

(iv) Unless otherwise specified in § 648.17.

(32) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies from one vessel to another vessel, unless both vessels have

not been issued multispecies permits and both fish exclusively in state waters, or unless authorized in writing by the Regional Administrator.

(33) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any NE multispecies from a trip, unless the vessel is holding a multispecies permit, or a letter under § 648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in § 648.89, or unless the NE multispecies were harvested by a vessel without a multispecies permit that fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(34) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a multispecies permit without having been issued and possessing a valid operator's permit.

(35) Fish with, use, or have on board within the area described in § 648.80(a)(1), nets of mesh whose size is smaller than the minimum mesh size specified in § 648.80(a)(2), except as provided in § 648.80(a)(3) through (6), (a)(8), (a)(9), (d), (e) and (i), unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(36) Fish with, use, or have available for immediate use within the area described in § 648.80(b)(1), nets of mesh size smaller than the minimum size specified in § 648.80(b)(2), except as provided in § 648.80(b)(3), (b)(9), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(37) Fish with, use, or have available for immediate use within the area described in § 648.80(c)(1), nets of mesh size smaller than the minimum mesh size specified in § 648.80(c)(2), except as provided in § 648.80(c)(3), (d), (e), and (i), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

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(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a) (2) and (d).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of Closed Area II specified in § 648.58 or 648.81(b)(2).

(40) Enter, or be in the area described in § 648.81(c)(1), on a fishing vessel, except as provided in § 648.81 (c)(2) and (d).

(41) Fail to comply with the gear-marking requirements of § 648.84.

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2), unless the vessel is issued and possesses on board an authorizing letter issued under § 648.80(a)(4)(i).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(4), the Cultivator Shoals whiting fishery exemption area; (a)(8), Small Mesh Area 1/Small Mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any of these paragraphs in § 648.80 is a separate violation.

(44) Fish for, land, or possess NE multispecies harvested by means of pair trawling or with pair trawl gear, except under the provisions of § 648.80(d), or unless the vessels that engaged in pair trawling have not been issued multispecies permits and fish for NE multispecies exclusively in state waters.

(45) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(3).

(46) Violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or fail to keep such letter

on board the vessel during the period of the experiment.

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(2), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

(48) Violate any provision of the open access permit restrictions as provided in § 648.88.

(49) Violate any of the restrictions on fishing with scallop dredge gear specified in § 648.80(h).

(50) Violate any provision of the state waters winter flounder exemption program as provided in § 648.80(i).

(51) Obstruct or constrict a net as described in § 648.80(g) (1) or (2).

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81 (g)(1) through (i)(1) during the time periods specified, except as provided in § 648.81(d), (g)(2), (h)(2) and (i)(2).

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) and from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.51 (a)(2)(ii) and (e)(2), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(54) Possess or land fish caught with nets of mesh smaller than the minimum size specified in § 648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in § 648.54 of this chapter, or fishing under a general scallop permit, unless said fish are caught, possessed or landed in accordance with §§ 648.80 and 648.86, or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limit specified in §648.86 applicable to a vessel issued a multispecies permit, unless otherwise specified in §648.17.

(56) Possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a general or limited access scallop permit; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(57) Fish for, possess, or land per trip, scallops in excess of 400 lb (181.44 kg) or 50 bu (17.62 hl) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel that has been issued and carries on board a limited access scallop permit, or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(58) Fish for, possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, unless:

(i) The scallops were harvested by a vessel with an operator on board who has been issued an operator's permit and the permit is on board the vessel and is valid; or

(ii) The scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(59) Have a shucking or sorting machine on board a vessel that shucks scallops at sea, while in possession of more than 400 lb (181.44 kg) of shucked scallops, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(60) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer, scallops from one vessel to another, unless that vessel has not been issued a scallop permit and fishes exclusively in state waters.

(61) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter or trade, or otherwise transfer, for a commercial purpose, any scallops from a trip whose catch is 40 lb (18.14 kg) of shucked scallops or less, or 5 bu (176.1 L) of in-shell scallops, unless the vessel has been issued a valid general or limited access scallop permit, or the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(62) Purchase, possess, or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, scallops taken from a fishing vessel that were harvested in or from the EEZ, unless issued, and in possession of, a valid scallop dealer's permit.

(63) Purchase, possess, or receive for commercial purposes, or attempt to purchase or receive for commercial purposes, scallops caught by a vessel other than one issued a valid limited access or general scallop permit unless the scallops were harvested by a vessel that has not been issued a scallop permit and fishes for scallops exclusively in state waters.

(64) Operate or act as an operator of a vessel fishing for or possessing any species of fish regulated by this part in or from the EEZ, or issued a permit pursuant to this part, without having been issued and possessing a valid operator's permit.

(65) Possess in or harvest from the EEZ summer flounder, either in excess of the possession limit specified in §648.105, or before or after the time period specified in §648.102, unless the vessel was issued a summer flounder moratorium permit and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(66) Possess nets or netting with mesh not meeting the minimum mesh requirement of §648.104 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of §648.105(a).

(67) Purchase or otherwise receive, except for transport, summer flounder from the owner or operator of a vessel issued a summer flounder moratorium

permit, unless in possession of a valid summer flounder dealer permit.

(68) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a summer flounder moratorium permit not subject to the possession limit of § 648.105.

(69) Purchase or otherwise receive for a commercial purpose summer flounder landed in a state after the effective date published in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state.

(70) Fail to comply with any sea turtle conservation measure specified in § 648.106, including any sea turtle conservation measure implemented by notification in the FEDERAL REGISTER in accordance with § 648.106(d).

(71) Use any vessel of the United States for taking, catching, harvesting, fishing for, or landing any Atlantic salmon taken from or in the EEZ.

(72) Transfer, directly or indirectly, or attempt to transfer to any vessel any Atlantic salmon taken in or from the EEZ.

(73) Take and retain, or land more mackerel, squid, and butterfish than specified under a notice issued under § 648.22.

(74) Possess nets or netting with mesh not meeting the minimum size requirement of § 648.23 and not stowed in accordance with the requirements of § 648.23, if in possession of *Loligo* harvested in or from the EEZ.

(75) Transfer *Loligo*, *Illex*, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessels are permitted or have a valid squid/butterfish incidental catch permit and a letter of authorization from the Regional Administrator.

(76) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except for transport on land, mackerel, squid, and butterfish taken from a fishing vessel unless issued, and in possession of a valid mackerel, squid, and butterfish fishery dealer permit.

(77) Purchase or otherwise receive for a commercial purpose, mackerel, squid, and butterfish caught by other than a vessel issued a mackerel, squid, and butterfish permit, unless the vessel has not been issued a permit under this part and fishes exclusively within the waters under the jurisdiction of any state.

(78) [Reserved]

(79) Violate any other provision of this part, the Magnuson Act, or any regulation, notice, or permit issued under the Magnuson Act.

(80) Possess scup in or harvested from the EEZ north of 35°15.3' N. lat. in an area closed, or before or after a season established pursuant to § 648.122.

(81) To purchase or otherwise receive for a commercial purpose scup harvested from the EEZ north of 35°15.3' N. lat., or from a vessel issued a scup moratorium permit after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(82) Land scup harvested in or from the EEZ north of 35°15.3' N. lat. after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(83) Possess scup harvested in or from the EEZ north of 35°15.3' N. lat. that do not meet the minimum fish size specified in § 648.124.

(84) Fish for, catch, or retain scup in excess of 4,000 lb (1,814 kg) in or from the EEZ north of 35°15.3' N. lat. unless the vessel meets the gear restrictions in § 648.123.

(85) Fish for, catch, or retain scup in or from the EEZ north of 35°15.3' N. lat. for sale, barter, or trade, after January 1, 1997, unless the vessel has been issued a valid moratorium permit pursuant to § 648.4(a)(6).

(86) Sell or transfer scup harvested in or from the EEZ north of 35°15.3' N. lat. after January 1, 1997, unless the vessel has been issued a valid moratorium permit pursuant to § 648.4(a)(6).

(87) Fish for, catch, or retain scup in or from the EEZ north of 35°15.3' N. lat. on board a party or charter boat after January 1, 1997, unless the vessel has been issued a valid party or charter boat permit pursuant to § 648.4(a)(6)(ii).

(88) Fish with or possess scup pots or traps in the EEZ north of 35°15.3' N. lat. that have a rectangular escape vent, any side of which is less than 2.25 inches (5.7 cm) in length.

(89) Fail to remove, use, set, haul back, fish with, or possess on board a vessel, unless stowed in accordance with §648.81(e)(4), sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in §648.81(f)(2)(ii)), in the areas and for the times specified in §648.87 (a) and (b), except as provided in §§648.81(f)(2)(i) and 648.87 (a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with §648.81(e)(4), or fail to remove, sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in §648.81(g)(2)(ii)), in the areas and for the times specified in §648.87(a) and (b), except as provided in §648.81(g)(2)(ii) and 648.87(a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

(91) Possess in or harvest from the EEZ from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, black sea bass either in excess of the possession limit established pursuant to §648.145 or before or after the time period established pursuant to §648.142, unless the person is operating a vessel issued a moratorium permit under §648.4 and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended;

(92) Fish for, catch, or retain 100 lb or more (45.4 kg or more) of black sea bass in or from the EEZ from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, unless the vessel meets the gear restrictions of §648.144.

(93) Purchase or otherwise receive for commercial purposes black sea bass caught in the EEZ from 35°15.3' N. lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border, by other than a vessel with a moratorium permit not subject to the possession limit established pur-

suant to §648.145 unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

(94) Possess or use rollers used in roller rig or rock hopper trawl gear that do not meet the minimum size requirement of §648.144 if the person possesses black sea bass harvested in or from the EEZ from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

(95) Possess or use pot and trap gear not meeting the requirements of §648.144 if the person possesses black sea bass harvested in or from the EEZ from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

(96) Purchase or otherwise receive for commercial purposes black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3' N. lat., after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quarterly quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(97) Fish in or transit the Scallop Experimental Area defined in §648.56(a)(1), except as provided for in §648.56 (a)(2) and (a)(3).

(98) Fish, or be in the areas described in §648.81(j)(1), (k)(1), (l)(1), and (m)(1) on a fishing vessel with mobile gear during the time periods specified in §648.81(j)(2), (k)(2), (l)(2), and (m)(2), except as provided in §648.81(j)(2), (k)(2), (l)(2), and (m)(2).

(99) Fish, or be in the areas described in §648.81(j)(1), (k)(1), and (l)(1) on a fishing vessel with lobster pot gear during the time periods specified in §648.81(j)(2), (k)(2), and (l)(2).

(100) Deploy in or fail to remove lobster pot gear from the areas described in §648.81(j)(1), (k)(1), and (l)(1), during the time periods specified in §648.81(j)(2), (k)(2), and (l)(2).

(101) Enter, fail to remove gear from, or be in the areas described in §648.81(g)(1) through (i)(1) during the time period specified, except as provided in §648.81(d), (g)(2), (h)(2), and (i)(2).

(102) Enter or fish in the Gulf of Maine/Georges Bank and Southern New

England Regulated Mesh Areas, except as provided in §§ 648.80 (a)(2)(iii) and (b)(2)(iii), and for purposes of transiting, provided that all gear (other than exempted gear) is stowed in accordance with § 648.23(b).

(103) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than transport, any multispecies, unless the dealer or transferee has a dealer permit issued under § 648.6.

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a), (b), (c), (g), (h), and (i), unless otherwise specified in § 648.81(c)(2)(iii), (g)(2)(i), and (g)(2)(iii).

(105) Offload unshucked surf clams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(106) Offload unshucked surf clams harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(107) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(108) Purchase, receive for a commercial purpose other than transport to a testing facility, or process, or attempt to purchase, receive for commercial purpose other than transport to a testing facility, or process, outside Maine, ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(109) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after

the effective date published in the FEDERAL REGISTER notifying participants that Maine mahogany quahog quota is no longer available, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.70.

(110) Fish for, possess or retain sea scallops in or from the areas described in § 648.57.

(111) Transit or be in the areas described in § 648.57 with scallop gear that is not properly stowed as required in § 648.57 or a preponderance of the evidence of record shows there was a compelling safety reason.

(112) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(8)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(3)(ii) or (a)(8)(ii).

(113) Land ocean quahogs outside Maine that are harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(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).

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller

Gear Area described in § 648.80(a)(2)(iv) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.48 cm).

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(H)(3), to land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a) and (b), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under § 648.4(a)(1)(i)(H)(3), unless otherwise specified in § 648.17, to do any of the following:

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of regulated species specified in § 648.86(c) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(3) or § 648.89.

(2) If required by § 648.10 to have a VMS unit:

(i) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage as specified in § 648.10(b).

(3) Combine, transfer, or consolidate DAS allocations.

(4) Fish for, possess, or land NE multispecies with or from a vessel 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).

(5) Fish for, possess, or land NE multispecies with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or

upgraded in excess of limitations specified in § 648.4(a)(1)(i)(E) and (F).

(6) Fail to comply with any provision of the DAS notification program as specified in § 648.10.

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.82(b)(4), if the vessel has been issued a limited access multispecies hook-gear permit.

(9) Fail to declare, and be, out of the NE multispecies DAS program as required by § 648.82(g), using the procedure described under § 648.82(h), as applicable.

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87(a) and (b), except as provided in § 648.81(d) and (g)(2), and in § 648.87(a)(1)(ii).

(11) If the vessel has been issued a limited access multispecies permit and fishes under a multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(k).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in § 648.82(k)(1).

(13) If the vessel has been issued a Day gillnet category designation, fail to remove gillnet gear from the water as described in § 648.82(g) and § 648.82(k)(1)(iv).

(14) Fail to produce or, cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under § 648.82(k)(1) without the written confirmation from the Regional Administrator described in § 648.82(k)(1)(ii).

(16) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel.

(17) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

(18) If the vessel has been issued a Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(k)(2).

(19) Fail to comply with the exemption specifications as described in § 648.86(b)(4).

(20) Fail to comply with the provisions of the cod hail weight notification specifications specified in § 648.86(b)(1)(ii)(B).

(21) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(k)(1)(iv), using the procedure described under § 648.82(h), as applicable.

(22) Fail to comply with the exemption specifications as described in § 648.17.

(23) Fail to enter port and call-out of the DAS program no later than 14 DAS after starting a multispecies DAS trip (i.e., the time a vessel leaves port or when the vessel received a DAS authorization number, whichever comes first), as specified in § 648.10(f)(3), unless otherwise specified in § 648.86(b)(1)(ii), or unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

(24) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i) without reporting the cod hail weight, unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

(25) Fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(26) Fish for, land or possess cod in excess of the cod trip landings and/or maximum possession limits specified in or pursuant to § 648.86(b)(2).

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel issued a multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

(1) Possess, at any time during a trip, or land per trip, more than the possession limit of regulated species specified in § 648.88(a), unless the regulated species were harvested by a charter or party vessel.

(2) Use, or possess on board, gear capable of harvesting NE multispecies, other than rod and reel or handline, while in possession of, or fishing for, NE multispecies.

(3) Possess or land NE multispecies during the time period specified in § 648.88(a)(2).

(4) Violate any provision of the open access handgear permit restrictions as provided in § 648.88(a).

(e) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (d) of this section, it is unlawful for any person owning or operating a vessel issued a scallop multispecies possession limit permit to possess or land more than the possession limit of regulated species specified at § 648.88(c) or to possess or land regulated species when not fishing under a scallop DAS, unless otherwise specified in § 648.17.

(f) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit or a general scallop permit under § 648.4(a)(2) to land, or possess at or after landing, in-shell scallops smaller than the minimum shell height specified in § 648.50(a).

(g) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) through (f) of this section, it is unlawful for the owner or operator of a charter or party boat issued a multispecies permit, or of a recreational vessel, as applicable, unless otherwise specified in § 648.17, to:

(1) Fish with gear in violation of the restrictions specified in § 648.89(a).

(2) Possess cod and haddock in excess of the possession limits specified in § 648.89(c).

(3) Sell, trade, barter, or otherwise transfer, or attempt to sell, trade, barter or otherwise transfer, NE multispecies for a commercial purpose as specified in § 648.89(d).

(h) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (g) of this section, it is unlawful for any person owning or operating a vessel issued a limited access scallop permit under § 648.4(a)(2) to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to §648.10, unless exempted from DAS allocations as provided in §648.54.

(2) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to §648.10, unless exempted from DAS allocations as provided in §648.55.

(3) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of §648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in §648.10.

(4) If the vessel is not subject to VMS requirements specified in §648.10(a), fail to comply with the requirements of the call-in system specified in §648.10(b).

(5) Combine, transfer, or consolidate DAS allocations.

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in §648.4(a)(2)(i)(H).

(7) Fish for, possess, or land scallops with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in §648.4(a)(2)(i)(E) or (F).

(8) Fish for, possess, or land scallops with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement increased or upgraded in excess of limitations specified in §648.4(a)(2)(i)(E) or (F).

(9) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 l) of in shell scallops or participate in the DAS allocation program, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in §648.51(a)(2)(ii).

(10) Fish under the DAS allocation program with, or have available for immediate use, trawl nets of mesh small-

er than the minimum size specified in §648.51(a)(2).

(11) Fish under the DAS allocation program with trawl nets that use chafing gear or other means or devices that do not meet the requirements of §648.51(a)(3).

(12) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops or participate in the DAS allocation program, while in possession of dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in §648.51(b)(1).

(13) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear that uses net or net material, or any other material, on the top half of the dredge with a mesh size smaller than that specified in §648.51(b)(2), unless otherwise prohibited under paragraph (h)(27) of this section.

(14) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, or fish under the DAS allocation program, while in possession of dredge gear containing rings that have minimum sizes smaller than those specified in §648.51(b)(3).

(15) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in §648.51(b)(4)(ii).

(16) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, or participate in the DAS allocation program, while in possession of dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in §648.51(b)(4).

(17) Participate in the DAS allocation program with more than the number of persons specified in §648.51(c), including the operator, on board when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator.

(18) Fish under the small dredge program specified in §648.51(e), with, or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(19) Fish under the small dredge program as specified in §648.51(e) with more than five persons, including the operator, aboard the vessel, unless otherwise authorized by the Regional Administrator.

(20) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(21) Refuse or fail to carry an observer if requested to do so by the Regional Administrator.

(22) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in §648.11.

(23) Fail to comply with any requirement for declaring in and out of the DAS allocation program as specified in §648.10.

(24) Fail to comply with any requirement for participating in the DAS Exemption Program as specified in §648.54.

(25) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in §648.51(f).

(26) Fail to comply with the restriction on twine top described in §648.51(b)(4)(iv).

(27) Enter or be in the area described in §648.58(b) when fishing under a scallop DAS, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in §648.58(c)(7).

(28) Fail to comply with any of the provisions and specifications of §648.58.

(i) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit to do any of the following:

(1) Possess, or land per trip, more than 400 lb (181.44 kg) of shucked or 50 bu (17.62 hl) of in-shell scallops.

(2) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that has a maximum combined dredge width exceeding 31 ft (9.4 m), measured at the widest point in the bail of each dredge, except as specified in §648.51(b)(1).

(3) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses net or net material on the top half of the dredge of a minimum mesh size smaller than that specified in §648.51(b)(2).

(4) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in §648.51(b)(3).

(5) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses links between rings of the gear or ring configurations that do not conform to the specifications described in §648.51(b)(4)(ii).

(6) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear that uses cookies or chafing gear, or other gear, means, or devices on the top half of a dredge that obstruct the openings in or between the rings, except as specified in §648.51(b)(4).

(7) Fish for, or land, more than 40 lb (18.14 kg) of scallops on more than one trip per calendar day.

(j) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a summer flounder permit (including moratorium permit) to do any of the following:

(1) Possess 100 lb or more (45.4 kg or more) of summer flounder between May 1 and October 31, or 200 lb or more (90.7 kg or more) of summer flounder between November 1 and April 30, unless the vessel meets the minimum mesh size requirement specified in §648.104(a), or is fishing in the exempted area with an exemption permit as

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specified in §648.104(b)(1), or holds an exemption permit and is in transit from the exemption area with nets properly stowed as specified in §648.104(f), or is fishing with exempted gear specified in §648.104(b)(2).

(2) Possess summer flounder in other than a box specified in §648.105(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in §648.104(a), unless the vessel is fishing pursuant to the exemptions specified in §648.104(b).

(3) Land summer flounder for sale in a state after the effective date of the notification in the FEDERAL REGISTER notifying permit holders that commercial quota is no longer available in that state.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in §648.104, unless the nets or netting are stowed in accordance with §648.104(f).

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if fishing with an exempted net described in §648.104, unless the nets or netting are stowed in accordance with §648.104(f).

(6) Fish west or south, as appropriate, of the line specified in §648.104(b)(1) if exempted from the minimum mesh requirement specified in §648.104 by a summer flounder exemption permit.

(7) Sell or transfer to another person for a commercial purpose, other than transport, any summer flounder, unless the transferee has a valid summer flounder dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a summer flounder moratorium permit.

(9) Offload, remove, or otherwise transfer, or attempt to offload, remove or otherwise transfer summer flounder from one vessel to another, unless that vessel has not been issued a summer flounder permit and fishes exclusively in state waters.

(k) In addition to the general prohibitions specified in §600.725 of this chap-

ter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a scup permit (including a moratorium permit) to do any of the following:

(1) Possess scup in excess of the threshold amount specified in §648.123, unless the vessel meets the minimum mesh-size restrictions specified in §648.123.

(2) Fail to keep scup separate from other species if fishing with nets having mesh that does not meet the minimum mesh-size restrictions specified in §648.123(a).

(3) Land scup for sale after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quota has been harvested.

(4) Possess nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in §648.123(a), unless the nets or netting are stowed in accordance with §648.23(b).

(5) Fish with nets or netting that do not meet the minimum mesh restriction or that are modified, obstructed or constricted while in possession of scup in excess of the threshold amount specified in §648.123.

(6) As of January 1, 1997, sell or transfer to another person for a commercial purpose, other than transport on land, any scup, unless the transferee has a dealer permit issued under §648.6.

(7) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing for scup under the terms of a moratorium permit issued pursuant to §648.4(a)(6).

(8) Use a scup pot or trap that does not have the hinges and fasteners made of degradable materials as specified in §648.123.

(9) Use a scup trap or pot that does not have a minimum escape vent of the size specified in §648.123.

(10) Use roller rig trawl gear equipped with rollers greater than the size specified in §648.123.

(11) Possess scup in, or harvested from, the EEZ in an area closed, or before or after a season established pursuant to §648.122.

(12) Use a scup trap or pot that is not marked in accordance with § 648.123(b)(3).

(l) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for the owner or operator of a party or charter boat issued a scup permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess scup in excess of the possession limit established pursuant to § 648.125.

(2) Fish for scup other than during a season established pursuant to § 648.122.

(3) Sell scup or transfer scup to another person for a commercial purpose.

(4) Possess scup that do not meet the minimum fish size specified in § 648.124(b).

(m) It is unlawful for the owner and operator of a party or charter boat issued a summer flounder permit (including moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess summer flounder in excess of the possession limit established pursuant to § 648.105.

(2) Fish for summer flounder other than during a season specified pursuant to § 648.102.

(3) Sell or transfer summer flounder to another person for a commercial purpose.

(n) It is unlawful to violate any terms of a letter authorizing experimental fishing pursuant to § 648.12 or to fail to keep such letter aboard the vessel during the time period of the experimental fishing.

(o) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a surf clam and ocean quahog permit or issued a surf clam and ocean quahog allocation permit under § 648.70, to land or possess any surf clams or ocean quahogs in excess of, or without, an individual allocation, or to transfer any surf clams or ocean quahogs to any person for a com-

mercial purpose other than transport, unless that person has a surf clam and ocean quahog processor/dealer permit.

(p) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit, to do any of the following:

(1) Possess more than the incidental catch allowance of *Loligo* or butterfish, unless issued a *Loligo* squid and butterfish fishery moratorium permit.

(2) Possess more than the incidental catch allowance of *Illex* squid unless issued an *Illex* squid moratorium permit.

(3) Take, retain, or land mackerel, squid, or butterfish in excess of a trip allowance specified under § 648.22.

(4) Take, retain, or land mackerel, squid, or butterfish after a total closure specified under § 648.22.

(5) Fish with or possess nets or netting that do not meet the minimum mesh requirement for *Loligo* specified in § 648.23(a), or that are modified, obstructed, or constricted, if subject to the minimum mesh requirement, unless the nets or netting are stowed in accordance with § 648.23(b) or the vessel is fishing under an exemption specified in § 648.23(a).

(6) Transfer squid or butterfish at sea to another vessel unless that other vessel has been issued a valid *Loligo* and butterfish or *Illex* moratorium permit and are transferring the species for which the vessel is permitted or a valid squid/butterfish incidental catch permit and a letter of authorization by the Regional Administrator.

(7) Fail to comply with any measures implemented pursuant to § 648.21.

(8) Carry passengers for hire while fishing commercially under a mackerel, squid, and butterfish fishery permit.

(9) Fail to carry on board a letter of authorization, if fishing in an experimental fishery pursuant to § 648.12.

(q) It is unlawful for the owner and operator of a party or charter boat issued a mackerel, squid, and butterfish fishery permit (including a moratorium permit), when the boat is carrying passengers for hire, to do any of the following:

(1) Violate any recreational fishing measures established pursuant to § 648.21(d).

(2) Sell or transfer mackerel, squid, or butterfish to another person for a commercial purpose.

(r) [Reserved]

(s) Any person possessing or landing per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, at or prior to the time when those scallops are received or possessed by a dealer, is subject to all of the scallop prohibitions specified in this section, unless the scallops were harvested by a vessel without a scallop permit that fishes for scallops exclusively in state waters. Any person, regardless of the quantity of scallops possessed or landed, is subject to the prohibitions of paragraphs (a)(4) through (7), (10), (11), (68), (69), (71), (72), (73), and (87) of this section.

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any person owning or operating a vessel issued a nonregulated multispecies permit to possess or land any regulated species as defined in § 648.2, or violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

(u) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

(1) Possess 1,000 lb (453.6 kg) or more of black sea bass, unless the vessel meets the minimum mesh requirement specified in § 648.144(a).

(2) Possess black sea bass in other than a box specified in § 648.145(c) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.144(a).

(3) Land black sea bass for sale in any state, or part thereof, north or south of 35°15.3' N. lat., after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quarterly quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(4) Fish with or possess nets or netting that do not meet the minimum

mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.144, unless the nets or netting are stowed in accordance with § 648.23(b).

(5) Fish with or possess rollers used in roller rig or rock hopper trawl gear that do not meet the requirements specified in § 648.144(a)(5).

(6) Fish with or possess pots or traps that do not meet the requirements specified in § 648.144(b).

(7) Sell or transfer to another person for a commercial purpose, other than transport on land, any black sea bass, unless the transferee has a valid black sea bass dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a black sea bass moratorium permit.

(9) Possess, retain or land black sea bass harvested in or from the EEZ in excess of the commercial trip limit established pursuant to § 648.140.

(10) Land black sea bass for sale in any state south of North Carolina.

(11) Possess black sea bass harvested in or from the EEZ north or south of 35°15.3' N. lat. after the effective date of the notification published in the FEDERAL REGISTER stating that the commercial quarterly quota has been harvested and the EEZ is closed to the harvest of black sea bass.

(v) It is unlawful for the owner and operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess black sea bass in excess of the possession limit established pursuant to § 648.145.

(2) Fish for black sea bass other than during a season specified pursuant to § 648.142.

(3) Sell black sea bass or transfer black sea bass to another person for a commercial purpose.

(w) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Possess in or harvest from the EEZ Atlantic bluefish in excess of the daily possession limit specified in § 648.131, unless that person has a permit meeting the requirements of § 648.4(a)(8);

(2) Possess, have custody or control of, ship, receive, barter, trade, transport, offer for sale, sell, purchase, import, or export any bluefish taken, retained, or landed in violation of the Magnuson-Stevens Act, or any regulation or permit issued under the Magnuson-Stevens Act;

(3) Fish under a permit meeting the requirements of § 648.4(a)(8) in violation of a notice of restriction published under § 648.162;

(4) Fish in the EEZ under a permit meeting the requirements of § 648.4(a)(8) during a closure under § 648.163; or

(5) Sell any Atlantic bluefish harvested from the EEZ unless that person has a permit that meets the requirements of § 648.4(a)(8).

(x) For purposes of this section, the following presumptions apply:

(1) *Surf clams and ocean quahogs.* (i) Possession of surf clams or ocean quahogs on the deck of any fishing vessel in closed areas, or the presence of any part of a vessel's gear in the water in closed areas, or the presence of any part of a vessel's gear in the water more than 12 hours after an announcement closing the entire fishery becomes effective, is prima facie evidence that such vessel was fishing in violation of the provisions of the Magnuson Act and these regulations.

(ii) Surf clams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70.

(iii) Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an

individual allocation under § 648.70; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surf clam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 648.(70) or § 648.75(b).

(2) *Scallops.* Scallops that are possessed or landed at or prior to the time when the scallops are received by a dealer, or scallops that are possessed by a dealer, are deemed to be harvested from the EEZ, unless the preponderance of all submitted evidence demonstrates that such scallops were harvested by a vessel without a scallop permit and fishing exclusively for scallops in state waters.

(3) *Summer flounder.* All summer flounder possessed aboard a party or charter boat issued a summer flounder permit are deemed to have been harvested from the EEZ.

(4) *NE multispecies.* (i) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed to have been taken or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

(ii) Regulated species possessed for sale that do not meet the minimum sizes specified in § 648.83 for sale are deemed taken from the EEZ or imported in violation of these regulations, unless the preponderance of all submitted evidence demonstrates that such fish were harvested by a vessel not issued a permit under this part and fishing exclusively within state waters, or by a vessel that fished exclusively in the NAFO Regulatory Area. This presumption does not apply to fish being sorted on deck.

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(5) *Mackerel, squid, and butterfish.* All mackerel and butterfish possessed on board a party or charter boat issued a mackerel, squid, and butterfish fishery permit are deemed to have been harvested from the EEZ.

(6) *Scup.* All scup possessed on board a party or charter boat issued a permit under §648.4 are deemed to have been harvested from the EEZ.

(7) *Black sea bass.* All black sea bass possessed on board a party or charter boat issued a permit under §648.4(a)(7)(ii) are deemed to have been harvested from U.S. waters of the western Atlantic Ocean from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

[61 FR 34968, July 3, 1996]

EDITORIAL NOTE: For FEDERAL REGISTER citations affection §648.14, see the List of CFR sections affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE 1: At 63 FR 45940, Aug. 28, 1998, §648.14 was amended by adding paragraph (a)(97), effective Aug. 28, 1998, through Feb. 28, 2000.

EFFECTIVE DATE NOTE 2: At 64 FR 14839, March 29, 1999, §648.14 was amended by adding paragraphs (a) (110) and (111), effective March 27, 1999, through March 1, 2001.

EFFECTIVE DATE NOTE 3: At 64 FR 42045, Aug. 3, 1999, §648.14 was amended by suspending paragraphs (c)(23), (c)(24), and (c)(25) and adding paragraphs (c)(27), (c)(28), (c)(29), and (c)(30), effective Aug. 3, 1999 through Jan. 30, 2000. For the convenience of the user, the added text follows:

§ 648.14 Prohibitions.

* * * * *

(c) * * *

(27) Fail to enter port and call-out of the DAS program no later than 14 DAS after starting (i.e., the time of the issuance of the DAS authorization number) a multispecies DAS trip, as specified in §648.10(f)(3)(iii), unless otherwise specified in §648.86(b)(1)(iv), or unless the vessel is fishing under the cod exemption specified in §648.86(b)(2).

(28) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in §648.86(b)(1)(iv) without reporting the cod haul weight, unless the vessel is fishing under the cod exemption

specified in §648.86(b)(2). Under no circumstances may such a trip exceed 14 days in length.

(29) Fail to remain in port for the appropriate time specified in §648.86(b)(1)(ii), except for transiting purposes, provided the vessel complies with §648.86(b)(5).

(30) Land more than the allowable limit of cod specified in §648.86(b)(1)(iv), unless the vessel is fishing under the cod exemption specified in §648.86(b)(2).

* * * * *

§ 648.15 Facilitation of enforcement.

(a) *General.* See §600.504 of this chapter.

(b) *Special notification requirements applicable to surf clam and ocean quahog vessel owners and operators.* (1) Vessel owners or operators are required to call the NMFS Office of Law Enforcement nearest to the point of offloading (contact the Regional Administrator for locations and phone numbers) and accurately provide the following information prior to the departure of their vessel from the dock to fish for surf clams or ocean quahogs in the EEZ: Name of the vessel; NMFS permit number assigned to the vessel; expected date and time of departure from port; whether the trip will be directed on surf clams or ocean quahogs; expected date, time, and location of landing; and name of the individual providing notice.

(2) Owners or operators that have given notification of a fishing trip under this paragraph (b) who decide to cancel or postpone the trip prior to departure must immediately provide notice of cancellation by telephone to the Office of Law Enforcement to which the original notification was provided. A separate notification shall be provided for the next fishing trip. Owners or operators that discontinue a fishing trip in the EEZ must immediately provide notice of discontinuance by telephone to the Office of Law Enforcement to which the original notification was provided. The owner or operator providing notice of discontinuance shall advise of any changes in landing time or port of landing. The owner or operator discontinuing a fishing trip in

the EEZ must return to port and off-load any surf clams or ocean quahogs prior to commencing fishing operations in the waters under the jurisdiction of any state.

(3) The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by an authorized officer.

(4) *Suspension of notification requirements.* The Regional Administrator may suspend notification requirements for vessels fishing under a Maine mahogany quahog permit issued pursuant to §648.4(a)(4)(i) if he determines that such notification is not necessary to enforce effectively the management measures in the Maine mahogany quahog zone. The Regional Administrator may rescind such suspension if he concludes that the original determination is no longer valid. A suspension or rescission of suspension of the notification requirements by the Regional Administrator shall be published in the FEDERAL REGISTER.

(c) *Radio hails.* Permit holders, while underway, must be alert for communication conveying enforcement instructions and immediately answer via VHF-FM radio, channel 16 when hailed by an authorized officer. Vessels not required to have VHF-FM radios by the Coast Guard are exempt from this requirement.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 63 FR 27485, May 19, 1998]

§ 648.16 Penalties.

See §600.735.

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area for Multispecies vessels.

A vessel issued a valid High Seas Fishing Compliance permit under 50 CFR part 300 is exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in §§648.4, 648.80, 648.82 and §648.86, respectively, while transiting the EEZ with multispecies on board the vessel, or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(a) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(b) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the EEZ;

(c) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in §648.81(e); and

(d) The vessel operator complies with the High Seas Fishing Compliance permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

[63 FR 11595, Mar. 10, 1998]

Subpart B—Management Measures for the Atlantic Mackerel, Squid, and Butterfish Fisheries

§ 648.20 Maximum optimum yield (OYs).

The OYs specified pursuant to §648.21 during a fishing year may not exceed the following amounts:

(a) Mackerel—that quantity of mackerel that is less than or equal to the allowable biological catch (ABC) in U.S. waters specified pursuant to §648.21.

(b) *Loligo*—the catch associated with a fishing mortality rate of F_{max} .

(c) *Illex*—the catch associated with a fishing mortality rate of F_{20} .

(d) Butterfish—the catch associated with a fishing mortality rate of F_{MSY} .

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997]

§ 648.21 Procedures for determining initial annual amounts.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Mackerel, Squid, and Butterfish Committee of the MAFMC: (1) Initial OY (IOY), domestic annual harvest (DAH), and domestic annual processing (DAP) for the squids; (2) IOY, DAH, DAP, and bycatch level of the total allowable level of foreign fishing (TALFF), if any, for butterfish; and (3) IOY, DAH, DAP, joint venture processing (JVP), if any, and TALFF, if any, for mackerel. The Monitoring

Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(b) *Guidelines.* As the basis for its recommendations under paragraph (a) of this section, the Monitoring Committee shall review available data pertaining to: Commercial and recreational landings, discards, current estimates of fishing mortality, stock status, the most recent estimates of recruitment, virtual population analysis results, levels of noncompliance by harvesters or individual states, impact of size/mesh regulations, results of a survey of domestic processors and joint venture operators of estimated mackerel processing capacity and intent to use that capacity, results of a survey of fishermen's trade associations of estimated mackerel harvesting capacity and intent to use that capacity, and any other relevant information. The specifications recommended pursuant to paragraph (a) of this section must be consistent with the following:

(1) *Squid.* (i) The ABC for any fishing year must be either the maximum OY specified in § 648.20, or a lower amount, if stock assessments indicate that the potential yield is less than the maximum OY.

(ii) IOY is a modification of ABC based on social and economic factors.

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula $ABC = S - C - T$, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year; S is the mackerel spawning stock size at the beginning of the year for which quotas are specified; and T, which must be equal to or greater than 900,000 mt (1,984,050,000 lb), is the spawning stock size that must be maintained in the year following the year for which quotas are specified.

(ii) IOY is a modification of ABC, based on social and economic factors, and must be less than or equal to ABC.

(iii) IOY is composed of DAH and TALFF. DAH, DAP, and JVP must be projected by reviewing data from sources specified in paragraph (a) of this section and other relevant data, including past domestic landings, pro-

jected amounts of mackerel necessary for domestic processing and for joint ventures during the fishing year, projected recreational landings, and other data pertinent for such a projection. The JVP component of DAH is the portion of DAH that domestic processors either cannot or will not use. In addition, IOY is based on the criteria set forth in the Magnuson Act, specifically section 201(e), and on the following economic factors:

(A) Total world export potential by mackerel producing countries.

(B) Total world import demand by mackerel consuming countries.

(C) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers.

(D) Increased/decreased revenues to the United States from foreign fees.

(E) Increased/decreased revenues to U.S. harvesters (with/without joint ventures).

(F) Increased/decreased revenues to U.S. processors and exporters.

(G) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest.

(H) Increases/decreases in U.S. processing productivity.

(I) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S.-caught fish, changes in trade barriers, technology transfer, and other considerations.

(3) *Butterfish.* (i) If the Monitoring Committee's review indicates that the stock cannot support a level of harvest equal to the maximum OY, the Monitoring Committee shall recommend establishing an ABC less than the maximum OY for the fishing year. This level represents the modification of maximum OY to reflect biological and ecological factors. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC must be set at that level.

(ii) IOY is a modification of ABC based on social and economic factors. The IOY is composed of a DAH and by-catch TALFF that is equal to 0.08 percent of the allocated portion of the mackerel TALFF.

(c) *Recommended measures.* Based on the review of the data described in

paragraph (a) of this section, the Monitoring Committee will recommend to the Squid, Mackerel, and Butterfish Committee the measures it determines are necessary to assure that the specifications are not exceeded from the following measures:

- (1) Commercial quotas.
- (2) The amount of *Loligo* and butterflyfish that may be retained, possessed and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5).
- (3) Commercial minimum fish sizes.
- (4) Commercial trip limits.
- (5) Commercial seasonal quotas/closures for *Loligo* and *Illex*.
- (6) Minimum mesh sizes.
- (7) Commercial gear restrictions.
- (8) Recreational harvest limit.
- (9) Recreational minimum fish size.
- (10) Recreational possession limits.
- (11) Recreational season.

(d) *Annual fishing measures.* (1) The Squid, Mackerel, and Butterfish Committee shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee shall recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC shall review these recommendations and based on the recommendations and any public comment received thereon, the MAFMC shall recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review the recommendations, and on or about November 1 of each year, shall publish notification in the FEDERAL REGISTER proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences shall be clearly stated and the

revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations shall be available for inspection at the office of the Regional Administrator during the public comment period.

(2) On or about December 15 of each year, the Assistant Administrator will make a final determination concerning the specifications for each species and any measures necessary to assure that the specifications will not be exceeded contained in the FEDERAL REGISTER notification. After the Assistant Administrator considers all relevant data and any public comments, notification of the final specifications and any measures necessary to assure that the specifications will not be exceeded and responses to the public comments will be published in the FEDERAL REGISTER. If the final specification amounts differ from those recommended by the MAFMC, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section.

(e) *Inseason adjustments.* The specifications established pursuant to this section may be adjusted by the Regional Administrator, in consultation with the MAFMC, during the fishing year by publishing notification in the FEDERAL REGISTER stating the reasons for such an action and providing a 30-day comment public comment period.

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997]

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Administrator projects that DAH will be attained for mackerel, the Assistant Administrator shall close the mackerel fishery in the EEZ, and the incidental

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catches specified for mackerel in paragraph (c) of this section will be prohibited. The Assistant Administrator shall close the directed fishery in the EEZ for *Loligo*, *Illex*, or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of the fishing year with incidental catches allowed as specified in paragraph (c) of this section.

(b) *Notification.* Upon determining that a closure is necessary, the Assistant Administrator will notify, in advance of the closure, the Executive Directors of the MAFMC, NEFMC, and SAFMC; mail notification of the closure to all holders of mackerel, squid, and butterfish fishery permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of closure in the FEDERAL REGISTER.

(c) *Incidental catches.* During the closure of the directed fishery for mackerel, the trip limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for *Loligo*, *Illex*, or butterfish, the trip limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each, and the trip limit for *Illex* is 5,000 lb (2.27 mt).

[61 FR 34968, July 3, 1996, as amended at 62 FR 8637, Feb. 26, 1997]

§ 648.23 Gear restrictions.

(a) *Mesh restrictions and exemptions.* Owners or operators of otter trawl vessels possessing *Loligo* harvested in or from the EEZ may only fish with nets having a minimum mesh size of 1 $\frac{7}{8}$ inches (48 mm) diamond mesh, inside stretch measure, applied throughout the codend for at least 150 continuous meshes forward of the terminus of the net, or for codends with less than 150 meshes, the minimum mesh size codend shall be a minimum of one-third of the net measured from the terminus of the codend to the head rope, unless they are fishing during the months of June, July, August, and September for *Illex* seaward of the following coordinates (copies of a map depicting this area are available from the Regional Administrator upon request):

Point	N. Lat.	W. Long.
M1	43°58.0'	67°22.0'
M2	43°50.0'	68°35.0'
M3	43°30.0'	69°40.0'
M4	43°20.0'	70°00.0'
M5	42°45.0'	70°10.0'
M6	42°13.0'	69°55.0'
M7	41°00.0'	69°00.0'
M8	41°45.0'	68°15.0'
M9	42°10.0'	67°10.0'
M10	41°18.6'	66°24.8'
M11	40°55.5'	66°38.0'
M12	40°45.5'	68°00.0'
M13	40°37.0'	68°00.0'
M14	40°30.0'	69°00.0'
M15	40°22.7'	69°00.0'
M16	40°18.7'	69°40.0'
M17	40°21.0'	71°03.0'
M18	39°41.0'	72°32.0'
M19	38°47.0'	73°11.0'
M20	38°04.0'	74°06.0'
M21	37°08.0'	74°46.0'
M22	36°00.0'	74°52.0'
M23	35°45.0'	74°53.0'
M24	35°28.0'	74°52.0'

Vessels fishing under this exemption may not have available for immediate use, as defined in paragraph (b) of this section, any net, or any piece of net, with a mesh size less than 1 $\frac{7}{8}$ inches (48 mm) diamond mesh or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with such minimum mesh size, when the vessel is landward of the specified coordinates.

(b) *Definition of "not available for immediate use."* A net that can be shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Below deck stowage.* (i) It is stored below the main working deck from which it is deployed and retrieved;

(ii) The towing wires, including the leg wires, are detached from the net; and

(iii) It is fan-folded (flaked) and bound around its circumference.

(2) *On-deck stowage.* (i) It is fan-folded (flaked) and bound around its circumference;

(ii) It is securely fastened to the deck or rail of the vessel; and

(iii) The towing wires, including the leg wires, are detached from the net.

(3) *On-reel stowage.* (i) It is on a reel and its entire surface is covered with canvas or other similar material that is securely bound;

(ii) The towing wires are detached from the net; and

(iii) The codend is removed and stored below deck.

(4) *On-reel stowage for vessels transiting the GOM Rolling Closure Areas.* (i) The net is on a reel, and its entire surface is covered with canvas or other similar material that is securely bound;

(ii) The towing wires are detached from the doors; and

(iii) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend.

(5) *Other methods of stowage.* Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the FEDERAL REGISTER.

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any combination of mesh or liners that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the rearmost portion of the net, provided the liner extends no more than 10 meshes forward of the rearmost portion of the net.

(d) *Net obstruction or constriction.* The owner or operator of a fishing vessel shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net that results in an effective mesh opening of less than 1 $\frac{7}{8}$ inches (48 mm) diamond mesh, inside stretch measure. Net strengtheners (covers), splitting straps and/or bull ropes or wire may be used, provided they do not constrict the top of the regulated portion of the net to less than an effective mesh opening of 1 $\frac{7}{8}$ inches (48 mm), diamond mesh, inside stretch measure. Net strengtheners (covers) may not have an effective mesh opening of less than 4.5 inches (11.43 cm), diamond mesh, inside stretch measure. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (d), head ropes are not

to be considered part of the top of the regulated portion of a trawl net.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 63 FR 1774, Jan. 12, 1998; 64 FR 24073, May 5, 1999]

Subpart C—Management Measures for Atlantic Salmon

§ 648.40 Prohibition on possession.

(a) *Incidental catch.* All Atlantic salmon caught incidental to a directed fishery for other species in the EEZ must be released in such a manner as to insure maximum probability of survival.

(b) *Presumption.* The possession of Atlantic salmon is prima facie evidence that such Atlantic salmon were taken in violation of this regulation. Evidence that such fish were harvested in state waters, or from foreign waters, or from aquaculture enterprises, will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

§ 648.41 Framework specifications.

(a) *Within season management action.* The New England Fishery Management Council (NEFMC) may, at any time, initiate action to implement, add to or adjust Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ, provided such an action is consistent with the goals and objectives of the Atlantic Salmon FMP.

(b) *Framework process.* After initiation of an action to implement, add to or adjust an Atlantic salmon management measure to allow for an Atlantic salmon aquaculture project in the EEZ, the NEFMC shall develop and analyze Atlantic salmon management measures to allow for Atlantic salmon aquaculture projects in the EEZ over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on aquaculture management measures must come from one or more of the following categories: minimum fish sizes, gear restrictions, minimum

mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones and any other management measures currently included in the FMP.

(c) *NEFMC recommendation.* After developing Atlantic salmon management measures and receiving public testimony, the NEFMC shall make a recommendation to NMFS. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to NMFS on whether to issue the management measures as a final rule. If NMFS concurs with the NEFMC's recommendation to issue the management measures as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of measures adopted following their implementation as a final rule.

(d) *NMFS action.* If the NEFMC's recommendation includes implementation of management measures and, after reviewing the NEFMC's recommendation and supporting information:

(1) NMFS concurs with the NEFMC's recommended management measures and determines that the recommended measures should be issued as a final rule based on the factors specified in paragraph (c)(1) through (4) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(2) NMFS concurs with the NEFMC's recommendation and determines that

the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the NEFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(3) NMFS does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(e) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[64 FR 40520, July 27, 1999]

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

§ 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (89 mm). Shell height is a straight line measurement from the hinge to the outermost part of the shell, that is, the edge farthest away from the hinge.

(b) *Compliance and sampling.* Compliance with the minimum shell-height standard will be determined by inspection and enforcement at or after landing, including the time when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer as follows: An authorized officer will take samples of 40 scallops each, at random, from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are less than the shell height specified. The total amount of scallops in possession will be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the standard. All scallops will be subject to inspection and enforcement, in accordance with these compliance and sampling procedures, up to and including

the time when a dealer receives or possesses scallops for a commercial purpose.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 648.4(a)(2), while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets in use by or available for immediate use, as specified in paragraph (a)(2)(iii) of this section, shall not exceed 144 ft (43.9 m) as measured by the total length of the footrope that is directly attached to the webbing of the net.

(2) *Net requirements—(i) Minimum mesh size.* The mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Mesh stowage.* Same as § 648.23(b).

(iii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions—(i) Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. “The top of the trawl net” means the 50 per-

cent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All dredge vessels fishing for or in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.1 L) of in-shell scallops, all trawl vessels fishing for scallops, and all dredge vessels issued a limited access scallop permit and fishing under the DAS program with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge, except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of “dredge or dredge gear” in § 648.2, i.e., the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these components parts.

(2) *Minimum mesh size.* (i) From June 15, 1999, through December 15, 1999, for vessels fishing under a scallop DAS, unless otherwise restricted under § 648.58, and from June 15, 1999, and beyond, for all vessels not fishing under the scallop DAS program, the mesh size of a net, net material, or any other material on the top of a scallop dredge

in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm) square or diamond mesh.

(ii) Starting December 16, 1999, unless otherwise restricted under §648.58, the mesh size of a net, net material, or any other material on the top of a scallop dredge possessed or used by vessels fishing under a scallop DAS shall not be smaller than 8-inch (20.32-cm) square or diamond mesh.

(iii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

(3) *Minimum ring size.* (i) The inside ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3.5 inches (89 mm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, i.e., “hangers,” are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. (A copy of a diagram showing a schematic of a legal dredge ring pattern is available upon request to the Office of the Regional Administrator).

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of

scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* Vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if rigged with only one dredge, such dredge is greater than 8 ft (2.44 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by netting or any other material, between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) For vessels rigged with only one dredge, and such dredge is less than 8 ft (2.44 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program specified in paragraph (e) of this section, or otherwise authorized by the Regional Administrator.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program that shuck scallops at sea.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request will be placed in the appropriate category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not have more than one dredge on board or in use.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets—(1) Prohibition on use of trawl nets.* A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets unless such vessel has on board a valid letter of authorization or permit endorsed to fish for scallops with trawl nets.

(2) *Eligibility to use trawl nets.* (i) A vessel is eligible for a letter of authorization or a permit endorsement to fish for scallops with trawl nets if the vessel:

(A) Has not fished for scallops with a scallop dredge after December 31, 1987, and, as of July 19, 1996, has a letter of authorization or permit endorsed to fish for scallops with trawl nets;

(B) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450, and is eligible for or has been issued a 1996 limited access scallop permit (if the vessel does not obtain a letter of authorization or a permit endorsed to fish for scallops with trawl nets for the 1996–97 scallop fishing year, the vessel shall not be eligible under this provision for subsequent fishing years); or

(C) Is a replacement vessel for a vessel described in paragraph (f)(2)(i)(A) or (B) of this section.

(ii) NMFS will contact the owners of all vessels with limited access scallop permits that have not previously been issued a letter of authorization or permit endorsed to fish for scallops with trawl nets as to whether, based on information available to NMFS on July 19, 1996, their vessels are eligible under paragraph (f)(2)(i)(B) of this section for a letter of authorization or permit endorsed to fish for scallops with trawl nets. If a vessel owner agrees with NMFS' determination that the vessel is eligible under paragraph (f)(2)(i)(B) of this section to fish for scallops with trawl nets, the owner must, within 30 days of receipt of the determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, and has an engine with no greater than 450 horsepower. The signed declaration shall serve as a rebuttable presumption that the vessel qualifies for a letter of authorization or permit endorsement to fish for scallops with trawl nets. Any replacement vessel must meet the limitations on fishing for scallops with scallop dredges that the vessel it is replacing met. The letter of authorization or permit endorsement must be requested by the vessel owner at the time the vessel owner initially applies for a permit for the replacement vessel.

[61 FR 34968, July 3, 1996, as amended at 61 FR 38405, July 24, 1996; 62 FR 14648, Mar. 27, 1997; 64 FR 31149, June 10, 1999]

EFFECTIVE DATE NOTE: At 64 FR 31149, June 10, 1999, § 648.51 was amended by revising paragraph (b)(2)(ii), effective Dec. 16, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(2) * * *

(ii) Mesh size is measured as provided in paragraph (a)(2)(iii) of this section.

* * * * *

§ 648.52 Possession limits.

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in §648.10, or that have used up their DAS allocations, and vessels possessing a General scallop permit, unless exempted under the state waters exemption program described under §648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops with not more than one scallop trip allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Georges Bank Sea Scallop Exemption Program as described in §648.58 are prohibited from possessing or landing per trip more than the sea scallop possession limit specified in §648.58(c)(6).

[61 FR 34968, July 3, 1996, as amended at 62 FR 37156, July 11, 1997; 64 FR 31149, June 10, 1999]

DAS category	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008+
Full-time	120	51	49	46	45	34	35	38	36	60
Part-time	48	20	19	18	18	14	14	15	17	24
Occasional	10	4	4	4	4	3	3	3	4	5

(c) *Adjustments in annual DAS allocations.* Adjustments or changes in annual DAS allocations, if required to meet fishing mortality reduction goals, may be made following a reappraisal and analysis under the framework provisions specified in §648.55.

(d) *End-of-year carry-over.* Limited access vessels with unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. At no time may more than 10 DAS be carried over. DAS sanctioned vessels will be credited with un-

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* For each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or occasional) it was assigned to in the proceeding year. Limited access scallop permits will indicate which category the vessel is assigned to. Vessels are prohibited from fishing for, landing per trip, or possessing more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops once their allocated number of DAS, as specified under paragraph (b) of this section, are used up.

(b) *DAS allocations.* Each vessel qualifying for one of the three categories specified in paragraph (a) of this section shall be allocated, annually, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of §648.10, or has used up its allocated DAS may leave port without being assessed a DAS, as long as it does not possess or land more than 400 lb (181.44 kg) of shucked or 50 bu (17.62 hl) of in-shell scallops and complies with the other requirements of this part. The annual allocations of DAS for each category of vessel for the fishing years indicated are as follows:

used DAS based on their DAS allocation minus total DAS sanctioned.

(e) *Accrual of DAS.* DAS shall accrue to the nearest minute.

(f) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the

USCG, will not accrue DAS for the time documented.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14648, Mar. 27, 1997; 62 FR 15386, Apr. 1, 1997; 63 FR 11595, Mar. 10, 1998; 64 FR 14839, Mar. 29, 1999]

§ 648.54 State waters exemption.

(a) *DAS exemption.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (c) through (f) of this section.

(b) *Gear restriction exemption—(1) Limited access permits.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(b) under paragraph (a) of this section is also exempt from the gear restrictions specified in § 648.51 (a), (b), (e)(1) and (e)(2) while fishing exclusively landward of the outer boundary of the waters of a state that has been deemed by the Regional Administrator under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

(2) *General permits.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51 (a), (b), and (e)(1) and (2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Administrator under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

(3) *State eligibility for gear exemption.*
 (i) A state is eligible to have vessels fishing exclusively landward of the outer boundary of the waters of that state exempted from the gear requirements specified in § 648.51 (a), (b), and (e) (1) and (e)(2), if it has a scallop fishery and a scallop conservation program that does not jeopardize the fishing

mortality/effort reduction objectives of the Scallop FMP.

(ii) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP.

(iii) Maine, New Hampshire, and Massachusetts have been determined by the Regional Administrator to have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. These states must immediately notify the Regional Administrator of any changes in their respective scallop conservation program. The Regional Administrator will review these changes and, if a determination is made that the state's conservation program jeopardizes the fishing mortality/effort reduction objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a final rule in the FEDERAL REGISTER amending this paragraph (b)(3)(iii) to eliminate the exemption for that state. The Regional Administrator may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a final rule in the FEDERAL REGISTER amending this paragraph (b)(3)(iii) to provide the exemption for such states.

(c) *Notification requirements.* Vessels fishing under the exemptions provided by paragraph(s) (a) and/or (b)(1) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(e).

(d) *Restriction on fishing in the EEZ.* A vessel fishing under a state water's exemption may not fish in the EEZ during that time.

(e) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership.

(f) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a)

and/or (b) of this section remains subject to all other requirements of this part.

(g) *Possession restriction exemption.* Any vessel issued a limited access permit that is exempt under paragraph (a) of this section from the DAS requirements of §648.53(b), or any vessel issued a general scallop permit is exempt from the possession restrictions specified in §648.52(a) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Administrator under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14649, Mar. 27, 1997; 62 FR 43470, Aug. 14, 1997]

§648.55 Framework specifications.

(a) Annually, or upon a request from the NEFMC, the Regional Administrator will provide the NEFMC with information on the status of the scallop resource.

(b) Within 60 days of receipt of that information, the NEFMC PDT shall assess the condition of the scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in §648.53(b), and of other management measures to achieve the stock-rebuilding objectives. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the Scallop FMP. The PDT shall report its findings and recommendations to the NEFMC. In its report to the NEFMC, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) Based on this review, the NEFMC PDT shall recommend total allowable DAS reduction schedules and develop options necessary to achieve the FMP goals and objectives, which may in-

clude a preferred option. The NEFMC PDT must demonstrate through analysis and documentation that the options it develops are expected to meet the Scallop FMP goals and objectives. The range of options developed by the NEFMC PDT may include any of the management measures in the Scallop FMP, including, but not limited to the categories described in §648.53(d).

(d) After receiving the PDT findings and recommendations, the NEFMC shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the Scallop FMP. After considering the PDT's findings and recommendations, or at any other time, if the NEFMC determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (1) DAS changes.
- (2) Shell height.
- (3) Offloading window reinstatement.
- (4) Effort monitoring.
- (5) Data reporting.
- (6) Trip limits.
- (7) Gear restrictions.
- (8) Permitting restrictions.
- (9) Crew limits.
- (10) Small mesh line.
- (11) Onboard observers.
- (12) Modifications to the overfishing definition.
- (13) VMS Demarcation Line for DAS monitoring.
- (14) DAS allocations by gear type.
- (15) Temporary leasing of scallop DAS requiring full public hearings.
- (16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch.
- (17) Aquaculture enhancement measures and closures.
- (18) Closed areas to lessen the amount of DAS reductions.

(19) Closed areas to increase the size of scallops caught.

(20) Modifications to the opening dates of closed areas.

(21) Any other management measures currently included in the FMP.

(e) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under 50 CFR 600.10. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2700 mi² (5000.4 km²), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels.

(2) Fixed gear location reporting and plotting requirements.

(3) Standards of operation when gear conflict occurs.

(4) Fixed gear marking and setting practices.

(5) Gear restrictions for specific areas (including time and area closures).

(6) Vessel monitoring systems.

(7) Restrictions on the maximum number of fishing vessels or amount of gear.

(8) Special permitting conditions.

(f) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(g) After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Administrator. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the management measures as a final rule. If the NEFMC recommends that the management measures should be published as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(h) If the NEFMC's recommendation includes adjustments or additions to

management measures, and if, after reviewing the NEFMC's recommendation and supporting information:

(1) The Regional Administrator concurs with the NEFMC's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the FEDERAL REGISTER as a final rule; or

(2) The Regional Administrator concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the NEFMC recommendation, the action will be published as a final rule in the FEDERAL REGISTER; or

(3) The Regional Administrator does not concur, the NEFMC will be notified, in writing, of the reasons for the non-concurrence.

(i) If the Regional Administrator concurs in the NEFMC's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about February 1 of each year. If the NEFMC fails to submit a recommendation to the Regional Administrator by December 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the NEFMC, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

(j) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

[61 FR 34968, July 3, 1996, as amended at 62 FR 1404, Jan. 10, 1997; 64 FR 14839, Mar. 29, 1999]

§ 648.57 Closed areas.

(a) *Hudson Canyon South Closed Area.* Through March 1, 2001, no vessel may fish for, possess, or retain sea scallops in or from the area known as the Hudson Canyon South Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) unless all gear on board is properly stowed and not available for immediate use in accordance with the provisions of §§648.23(b) and 648.81(e). Further, vessels not fishing in the scallop DAS program and fishing for species other than scallops or not in possession of scallops in this area must stow scallop dredge gear in accordance with the provisions of §§648.23(b) and 648.81(e). The Hudson Canyon South Closed Area is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
H1	39 30' N.	73 10' W.
H2	39 30' N.	72 30' W.
H3	38 30' N.	73 30' W.
H4	38 40' N.	73 50' W.

(b) *Virginia Beach Closed Area.* Through March 1, 2001, no vessel may fish for, possess, or retain sea scallops in or from the area known as the Virginia Beach Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) unless all gear on board is properly stowed and not available for immediate use in accordance with the provisions of §§648.23(b) and 648.81(e). Further, vessels not fishing in the scallop DAS program and fishing for species other than scallops or not in possession of scallops in this area must stow scallop dredge gear in accordance with the provisions of §§648.23(b) and 648.81(e). The Virginia Beach Closed Area is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
V1	37 00' N.	74 55' W.
V2	37 00' N.	74 35' W.
V3	36 25' N.	74 45' W.
V4	36 25' N.	74 55' W.

EFFECTIVE DATE NOTE: At 64 FR 14840, Mar. 29, 1999, §648.57 was added, effective Mar. 27, 1999, through Mar. 1, 2001.

§ 648.58 Georges Bank Sea Scallop Exemption Program.

(a) *Eligibility.* (1) During the period June 15, 1999, through December 31, 1999, all scallop vessels issued a limited access scallop permit may fish in the Georges Bank Sea Scallop Exemption Area, defined in paragraph (b) of this section, when fishing under a scallop DAS, provided the vessel complies with the requirements of paragraph (c) of this section.

(2) Except for scallop vessels fishing under a scallop DAS that have not declared a fishing trip into the Georges Bank Sea Scallop Exemption Program,

as specified under paragraph (c)(3)(i) of this section, vessels may fish in that portion of the exemption area described in paragraph (b) of this section that lies outside of Closed Area II, as described in §648.81(b), provided the vessel complies with all applicable regulations.

(b) *Georges Bank Sea Scallop Exemption Area.* The Georges Bank Sea Scallop Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GEORGES BANK SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
DA1	40°24.000'	67°40.000'
DA2	40°24.000'	65°43.121'(on U.S./Canada Maritime Boundary)
G6	41°30.000'	66°34.728'(on U.S./Canada Maritime Boundary)
G7	41°30.000'	67°20.000'
DA4	42°12.000'	67°20.000'
DA5	42°12.000'	67°40.000'
DA1	40°24.000'	67°40.000'

(c) *Requirements.* To fish in the Georges Bank Sea Scallop Exemption Area under the Georges Bank Sea Scallop Exemption Program an eligible vessel must comply with the following requirements:

(1) *Season.* The vessel may only fish in the Georges Bank Sea Scallop Exemption Area under the Georges Bank Sea Scallop Exemption Program only from June 15 through December 31, 1999, unless otherwise specified by notification in the FEDERAL REGISTER.

(2) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §648.9(b) or as modified in §648.9(a).

(3) *Declaration.* (i) The vessel must submit a monthly report through the VMS e-mail messaging system, prior to the 15th of the month preceding the month in question, of its intention to fish in the exemption area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the month in question.

(ii) In addition, on the day the vessel leaves port to fish under the Georges

Bank Sea Scallop Exemption Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to leaving port.

(iii) A vessel selected for observer coverage must provide notice to NMFS, in accordance with the notification requirements specified under §648.11(b), as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Georges Bank Sea Scallop Exemption Program.

(4) *Number of trips.* If the vessel is a full or part-time scallop vessel, it must not fish more than three trips in the Georges Bank Sea Scallop Exemption Area during the season described in paragraph (c)(1) of this section, unless otherwise specified by notification in the FEDERAL REGISTER. If the vessel is an occasional scallop vessel, it must not fish more than one trip in the Georges Bank Sea Scallop Exemption Area during the season described in paragraph (c)(1) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Georges Bank Sea Scallop Exemption Program must not

fish for, catch, or harvest scallops from outside of the Georges Bank Sea Scallop Exemption Area and must not enter or exit the Exemption Area more than once per trip.

(6) *Possession limits.* (i) Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, a vessel declared into the Georges Bank Sea Scallop Exemption Program may possess and land up to 10,000 lb (4,536.0 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (176.1 L) of in-shell scallops.

(ii) The vessel may possess and land up to 500 lb (226.8 kg) of regulated multispecies, unless otherwise restricted under § 648.86(a)(2)(i) or (b), or the vessel is carrying a NMFS approved sea sampler or observer on board the vessel. A vessel carrying an approved sea sampler or observer may possess all regulated multispecies caught, provided the regulated multispecies in excess of 500 lb (226.8-kg) are donated to charity. A vessel subject to the 500-lb (226.8-kg) possession limit must separate all regulated multispecies onboard from other species of fish so as to be readily available for inspection.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge gear only in accordance with the dredge vessel restrictions specified under § 648.51(b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting.* When transiting to and from the Georges Bank Sea Scallop Exemption Area, all gear on board must be properly stowed and not available for immediate use in accordance with the provisions of § 648.81(e).

(9) *Off-loading restrictions.* The vessel may not off-load its sea scallop catch at more than one location.

(10) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Georges Bank Sea Scallop Exemption Program. The reports must be submitted in 24-hour intervals, be-

ginning at 0000 hours and ending at 2400 hours each day, and include the following information:

(i) Total pounds/kilograms of scallop meats kept; and

(ii) For each trip that the vessel has a NMFS approved observer on board, the total pounds/kilograms of scallop meats kept and total pounds/kilograms of yellowtail flounder caught on tows that were observed by a NMFS approved observer.

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Georges Bank Sea Scallop Exemption Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Possession limit increase.* The Regional Administrator may increase the sea scallop possession limit specified under paragraph (c)(6) of this section for a vessel that has declared a fishing trip into the Georges Bank Sea Scallop Exemption Program and on which a NMFS approved sea sampler or observer is on board the vessel, or on which a NMFS approved research project is being conducted. Notification of this increase of the possession limit will be provided to the vessel with the observer selection notification. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer and/or defraying the cost of the research project, whichever is applicable, regardless of whether the vessel lands or sells sea scallops on that trip.

(f) *In-season adjustments—(1) Adjustment process for sea scallop possession limit and number of trips under the Georges Bank Sea Scallop Exemption Program.* On or after October 1, 1999, the Regional Administrator may adjust the sea scallop possession limit, and/or allocate one or more additional trips for full and part-time limited access sea scallop vessels that declared into and began a trip under the Georges Bank Sea Scallop Exemption Program prior to September 1, 1999. Occasional permitted vessels would not be allocated

an additional trip regardless of whether or not they declared or began an exempted trip before September 1, 1999.

(2) *Termination of Georges Bank Sea Scallop Exemption Program because of yellowtail flounder bycatch/incidental catch.* NMFS shall publish notification in the FEDERAL REGISTER that the Georges Bank Sea Scallop Exemption Program is terminated as of the date the Regional Administrator projects that the 387 mt of yellowtail flounder will be caught by vessels fishing in the Georges Bank Sea Scallop Exemption Program described in this section.

(g) *Transiting.* Limited access sea scallop vessels intending to fish for scallops under a scallop DAS that have not declared a trip into the Georges Bank Sea Scallop Exemption Program may not enter, fish, or be in the area known as the Georges Bank Sea Scallop Exemption Area described in paragraph (b) of this section, unless:

(1) The operator has determined that there is a compelling safety reason; and

(2) The vessel's fishing gear is stowed in accordance with the requirements of § 648.81(e).

[64 FR 31149, June 10, 1999]

Subpart E—Management Measures for the Atlantic Surf Clam and Ocean Quahog Fisheries

§ 648.70 Annual individual allocations.

(a) *General.* (1) For each fishing year, the Regional Administrator shall determine the allocation of surf clams and ocean quahogs for each vessel owner issued an allocation for the preceding fishing year, by multiplying the quotas specified for each species by the Regional Administrator under § 648.71 by the allocation percentage, specified for that owner on the allocation permit for the preceding fishing year, adjusted to account for any transfer pursuant to paragraph (b) of this section. These allocations shall be made in the form of an allocation permit specifying for each species the allocation percentage and the allocation in bushels. Such permits shall be issued on or before December 15, to the registered holders who were assigned an allocation by November 1. The total number of bushels

of allocation shall be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 648.75. Amounts of allocation 0.5 or smaller created by this division shall be rounded downward to the nearest whole number and amounts of allocation greater than 0.5 created by this division shall be rounded upward to the nearest whole number so that allocations are specified in whole cages. An allocation permit is only valid for the entity for which it is issued.

(2) The Regional Administrator may, after publication of a fee notification in the FEDERAL REGISTER, charge a permit fee before issuance of the permit to recover administrative expenses. Failure to pay the fee will preclude issuance of the permit.

(b) *Transfers—*(1) *Allocation percentage.* Subject to the approval of the Regional Administrator, part or all of an allocation percentage may be transferred, in amounts equivalent to not less than 160 bu (8,500 L) (i.e., 5 cages) in the year in which the transfer is made, to any person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a). Approval of a transfer by the Regional Administrator and for a new allocation permit reflecting that transfer may be requested by submitting a written application for approval of the transfer and for issuance of a new allocation permit to the Regional Administrator at least 10 days before the date on which the applicant desires the transfer to be effective, in the form of a completed transfer log supplied by the Regional Administrator. The transfer is not effective until the new holder receives a new or revised annual allocation permit from the Regional Administrator. An application for transfer may not be made between October 15 and December 31 of each year.

(2) *Cage tags.* Cage tags issued pursuant to § 648.75 may be transferred in quantities of not less than 5 tags at any one time, subject to the restrictions and procedure specified in paragraph (b)(1) of this section; provided that application for such cage tag transfers may be made at any time before December 10 of each year and the transfer is effective upon the receipt by

the transferee of written authorization from the Regional Administrator.

(3) *Review.* If the Regional Administrator determines that the applicant has been issued a Notice of Permit Sanction for a violation of the Magnuson Act that has not been resolved, he/she may decline to approve such transfer pending resolution of the matter.

§ 648.71 Catch quotas.

(a) *Surf clams.* The amount of surf clams that may be caught annually by fishing vessels subject to these regulations will be specified by the Assistant Administrator, on or about December 1 of each year, within the range of 1.85 to 3.4 million bu (98.5 to 181 million L).

(1) *Establishing quotas.* (i) Prior to the beginning of each year, the MAFMC, following an opportunity for public comment, will recommend to the Assistant Administrator quotas and estimates of DAH and DAP within the ranges specified. In selecting the quota, the MAFMC shall consider current stock assessments, catch reports, and other relevant information concerning:

(A) Exploitable and spawning biomass relative to the OY.

(B) Fishing mortality rates relative to the OY.

(C) Magnitude of incoming recruitment.

(D) Projected effort and corresponding catches.

(E) Geographical distribution of the catch relative to the geographical distribution of the resource.

(F) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(ii) The quota shall be set at that amount that is most consistent with the objectives of the Atlantic Surf Clam and Ocean Quahog FMP. The Assistant Administrator may set quotas at quantities different from the MAFMC's recommendations only if he/she can demonstrate that the MAFMC's recommendations violate the national standards of the Magnuson Act and the objectives of the Atlantic Surf Clam and Ocean Quahog FMP.

(2) *Report.* Prior to the beginning of each year, the Regional Administrator

shall prepare a written report, based on the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to OY.

(ii) Fishing mortality rates relative to OY.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Status of areas previously closed to surf clams fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

(vi) Geographical distribution of the catch relative to the geographical distribution of the resource.

(3) *Public review.* Based on the information presented in the report, and in consultation with the MAFMC, the Assistant Administrator shall propose an annual surf clam quota and an annual ocean quahog quota and shall publish them in the FEDERAL REGISTER. Comments on the proposed annual quotas may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the FEDERAL REGISTER on or about December 1 of each year.

(b) *Ocean quahogs.* The amount of ocean quahogs that may be caught by fishing vessels subject to these regulations shall be specified annually by the Assistant Administrator, on or about December 1, within the range of 4 to 6 million bu (213 to 319.4 million L), following the same procedures set forth in paragraph (a) of this section for surf clams.

§ 648.72 Minimum surf clam size.

(a) *Minimum length.* The minimum length for surf clams is 4.75 inches (12.065 cm).

(b) *Determination of compliance.* No more than 50 surf clams in any cage may be less than 4.75 inches (12.065 cm) in length. If more than 50 surf clams in any inspected cage of surf clams are less than 4.75 inches (12.065 cm) in

length, all cages landed by the same vessel from the same trip are deemed to be in violation of the minimum size restriction.

(c) *Suspension.* Upon the recommendation of the MAFMC, the Regional Administrator may suspend annually, by publication in the FEDERAL REGISTER, the minimum shell-height standard, unless discard, catch, and survey data indicate that 30 percent of the surf clams are smaller than 4.75 inches (12.065 cm) and the overall reduced shell height is not attributable to beds where the growth of individual surf clams has been reduced because of density dependent factors.

(d) *Measurement.* Length is measured at the longest dimension of the surf clam shell.

§ 648.73 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Assistant Administrator determines that the adverse environmental conditions no longer exist. If additional areas are identified by the Assistant Administrator as being contaminated by the introduction or presence of hazardous materials or pollutants, they may be closed by the Assistant Administrator in accordance with paragraph (c) of this section. The areas closed are:

(1) *Boston Foul Ground.* The waste disposal site known as the "Boston Foul Ground" and located at 42°2'36" N. lat., 70°35'00" W. long., with a radius of 1 nm in every direction from that point.

(2) *New York Bight.* The polluted area and waste disposal site known as the "New York Bight" and located at 40°25'04" N. lat., 73°42'38" W. long., and with a radius of 6 nm in every direction from that point, extending further northwestward, westward and southwestward between a line from a point on the arc at 40°31'00" N. lat., 73°43'38" W. long., directly northward toward Atlantic Beach Light in New York to the limit of the state territorial waters of New York; and a line from the point on the arc at 40°19'48" N. lat., 73°45'42" W. long., to a point at the limit of the

state territorial waters of New Jersey at 40°14'00" N. lat., 73°55'42" W. long.

(3) *106 Dumpsite.* The toxic industrial site known as the "106 Dumpsite" and located between 38°40'00" and 39°00'00" N. lat., and between 72°00'00" and 72°30'00" W. long.

(b) *Areas closed because of small surf clams.* Areas may be closed because they contain small surf clams.

(1) *Closure.* The Assistant Administrator may close an area to surf clams and ocean quahog fishing if he/she determines, based on logbook entries, processors' reports, survey cruises, or other information, that the area contains surf clams of which:

(i) Sixty percent or more are smaller than the minimum size (4.5 inches (11.43 cm)); and

(ii) Not more than 15 percent are larger than 5.5 inches (13.97 cm) in size.

(2) *Reopening.* The Assistant Administrator may reopen areas or parts of areas closed under paragraph (b)(1) of this section if he/she determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches (12.065 cm); or

(ii) The yield or rate of growth of the dominant shell-height class in the area to be reopened would be significantly enhanced through selective, controlled, or limited harvest of surf clams in the area.

(c) *Procedure.* (1) The Regional Administrator may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Assistant Administrator shall publish notification in the FEDERAL REGISTER of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Administrator within 30 days after publication. The Assistant Administrator shall consider all comments and publish the final notification of closure or reopening, and any restrictions on harvest, in the FEDERAL REGISTER. Any adjustment to harvest restrictions in a reopened area shall be made by notification in the

FEDERAL REGISTER. The Regional Administrator shall send notice of any action under this paragraph (c)(1) to each surf clam and ocean quahog processor and to each surf clam and ocean quahog permit holder.

(2) If the Regional Administrator determines, as the result of testing by state, Federal, or private entities, that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse effects fishing may have on the public health, he/she may close the area for 60 days by publication of notification in the FEDERAL REGISTER, without prior comment or public hearing. If an extension of the 60-day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) of this section shall be followed.

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin—(1) Maine mahogany quahog zone.* The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for paralytic shellfish poisoning. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding these areas contact the State of Maine Division of Marine Resources at (207-624-6550).

(2) [Reserved]

[61 FR 34968, July 3, 1996, as amended at 62 FR 14649, Mar. 27, 1997; 62 FR 37156, July 11, 1997; 63 FR 27485, May 19, 1998]

§ 648.74 Shucking at sea.

(a) *Observers.* (1) The Regional Administrator may allow the shucking of surf clams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking.

(2) Any vessel owner may apply in writing to the Regional Administrator to shuck surf clams or ocean quahogs

at sea. The application shall specify: Name and address of the applicant, permit number of the vessel, method of calculating the amount of surf clams or ocean quahogs harvested in the shell, vessel dimensions and accommodations, and length of fishing trip.

(3) The Regional Administrator shall provide an observer to any vessel owner whose application is approved. The owner shall pay all reasonable expenses of carrying the observer on board the vessel.

(4) Any observer shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 648.7.

(b) *Conversion factor.* (1) Based on the recommendation of the MAFMC, the Regional Administrator may allow shucking at sea of surf clams or ocean quahogs, with or without an observer, if he/she determines a conversion factor for shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell.

(2) The Regional Administrator shall publish notification in the FEDERAL REGISTER specifying a conversion factor together with the data used in its calculation for a 30-day comment period. After consideration of the public comments and any other relevant data, the Regional Administrator may publish final notification in the FEDERAL REGISTER specifying the conversion factor.

(3) If the Regional Administrator makes the determination specified in paragraph (b)(1) of this section, he/she may authorize the vessel owner to shuck surf clams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

§ 648.75 Cage identification.

Except as provided in § 648.76, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surf clams and ocean quahogs:

(a) *Tagging.* Before offloading, all cages that contain surf clams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of

this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage for every 60 ft³ (1,700 L), or portion thereof, of the cage. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for collection or disposal as specified by the Regional Administrator.

(b) *Issuance.* The Regional Administrator will issue a supply of tags to each individual vessel owner qualifying for an allocation under § 648.70 prior to the beginning of each fishing year or he/she may specify, in the FEDERAL REGISTER, a vendor from whom the tags shall be purchased. The number of tags will be based on the owner's allocation. Each tag represents 32 bu (1,700 L) of allocation.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued, or if rendered null and void in accordance with 15 CFR part 904.

(d) *Return.* Tags that have been rendered null and void must be returned to the Regional Administrator, if possible.

(e) *Loss.* Loss or theft of tags must be reported by the owner, numerically identifying the tags to the Regional Administrator by telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement.* Lost or stolen tags may be replaced by the Regional Administrator if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Administrator or a vendor with a written authorization from the Regional Administrator.

(g) *Transfer.* See § 648.70(b)(2).

(h) *Presumptions.* Surf clams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surf clams and ocean quahogs in cages with a Federal tag or

tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under § 648.75(b) or transferred under § 648.70(b).

[61 FR 34968, July 3, 1996, as amended at 63 FR 27485, May 19, 1998]

§ 648.76 Maine mahogany quahog zone.

(a) *Landing requirements.* (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.70 and 648.75. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally-permitted dealers for inspection by NMFS.

(b) *Quota monitoring and closures—(1) Catch quota.* (i) The annual quota for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bushels (35,150 hL). The quota may be revised annually within the range of 17,000 and 100,000 Maine bushels (5,975 and 35,150 hL) following the procedures set forth in § 648.71.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.70 shall be applied against the Maine mahogany quahog quota, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.70 will be

counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the quota based on dealer reports and other available information and shall determine the date when the quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel.* The Council shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surf Clam and Ocean Quahog Committee of the Council, regarding revisions to the annual quota and other management measures.

[63 FR 27485, May 19, 1998]

Subpart F—Management Measures for the NE Multispecies Fishery

§648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

Except as provided in §648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area—(1) Area definition.* The GOM/GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE/GEORGES BANK REGULATED MESH AREA

Point	N. Lat.	W. Long.
G1	(¹)	(¹)
G2	43°58'	67°22'
G3	42°53.1'	67°44.4'
G4	42°31'	67°28.1'
G5	41°18.6'	66°24.8'

¹The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.	Approximate Ioran C bearings
G6	40°55.5'	66°38'	5930-Y-30750 and 9960-Y-43500.
G7	40°45.5'	68°00'	9960-Y-43500 and 68°00' W. lat.
G8	40°37'	68°00'	9960-Y-43450 and 68°00' W. lat.
G9	40°30'	69°00'	
NL3	40°22.7'	69°00'	
NL2	40°18.7'	69°40'	
NL1	40°50'	69°40'	
G11	40°50'	70°00'	
G12		¹ 70°00'	

¹Northward to its intersection with the shoreline of mainland Massachusetts.

(2) *Gear restrictions.* (i) *Minimum mesh size.* Except as provided in paragraphs (a)(2) (i) and (iii) of this section, and unless otherwise restricted under paragraph (a)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE

multispecies DAS program in the GOM/GB Regulated Mesh Area is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51 cm) square mesh throughout the entire net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(2)(iv) of this section. This restriction does not apply to nets or pieces of nets smaller

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than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large-mesh vessels.* When fishing in the GOM/GB regulated mesh area, the minimum mesh size for any sink gillnet on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program specified in §648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the large-mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM/GB Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8) through (13), (d), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in §648.82(b)(3), if fishing under the scallop state waters exemptions specified in §648.54 and (a)(10) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in §648.81(e).

(iv) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers must not exceed 12 inches (30.48 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

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INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM23	42°00'	69°50'
GM24	43°00'	69°50'
GM11	43°00'	70°00'
GM17	43°30'	70°00'
GM18	43°30'	(4)

¹ Massachusetts shoreline.
² Cape Cod shoreline on Cape Cod Bay.
³ Cape Cod shoreline on the Atlantic Ocean.
⁴ Maine shoreline.

(3) *Small Mesh Northern Shrimp Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish for, harvest, possess, or land northern shrimp in the Small Mesh Northern Shrimp Fishery Exemption Area with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(3) (i) through (iii) of this section. The Small Mesh Northern Shrimp Fishery Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

SMALL MESH NORTHERN SHRIMP FISHERY EXEMPTION AREA

Point	N. Lat.	W. Long.
SM1	41°35'	70°00'
SM2	41°35'	69°40'
SM3	42°49.5'	69°40'
SM4	43°12'	69°00'
SM5	43°41'	68°00'
G2	43°58'	67°22'; (the U.S.-Canada maritime Boundary).
G1	(1)	(1)

¹Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* A vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; silver hake—up to an amount equal to the total weight of shrimp landed; and American lobster—up to 10 percent, by weight, of all other species

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on board, or 200 lobsters (whichever is less).

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraph (a)(2) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit out of the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission's letter to participants.

(4) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

**CULTIVATOR SHOAL WHITING FISHERY
EXEMPTION AREA**

Point	N. Lat.	W. Long.
C1	42°10'	68°10'
C2	41°30'	68°41'
C4	41°30'	68°30'
C3	41°12.8'	68°30'
C4	41°05'	68°20'
C5	41°55'	67°40'
C1	42°10'	68°10'

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Administrator on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; mackerel; monkfish and monkfish parts, dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

(B) All nets must comply with a minimum mesh size of 3-inch (7.62 cm) square or diamond mesh applied to the first 160 meshes counted from the terminus of the net.

(C) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the FEDERAL REGISTER.

(D) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in §648.23(b).

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator

following the procedures specified in § 648.90 of this part.

(5) [Reserved]

(6) *Transiting.* (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery or the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraphs (a)(3) and (a)(8) of this section, may transit through the Small Mesh Northern Shrimp Fishery Exemption Area as specified in paragraph (a)(3) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the Small Mesh Northern Shrimp Fishery Exemption Area defined in paragraph (a)(3) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may transit through the GOM/GB Regulated Mesh Area defined in paragraph (a)(1) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(4), (a)(9), (b), and (c) of this section. Vessels may retain exempted small mesh species as provided in paragraphs (a)(4)(i), (a)(9)(i), (b)(3), and (c)(3) of this section.

(7) *Addition or deletion of exemptions.*

(i) An exemption may be added in an existing fishery for which there are suf-

ficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration factors such as, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the FEDERAL REGISTER.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species.

(iii) The Regional Administrator may, using the process described in either paragraph (a)(7)(i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such fishery shall not include white hake.

(iv) Bycatch in exempted fisheries authorized under this paragraph (a)(7) are subject, at minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(7)(iii) of this section, a prohibition on the possession of regulated species.

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board.

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(D) A limit on the possession of skate or skate parts in the Southern New England regulated mesh area described in paragraph (b) of this section of 10 percent, by weight, of all other species on board.

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i) Unless otherwise prohibited in §648.81, vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraph (a)(3)(ii) or (a)(8)(ii) of this section, from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part), with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to §600.502 of this chapter)):

SMALL MESH AREA 1

Point	N. lat.	W. long.
SM1	43°03'	70°27'
SM2	42°57'	70°22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'

SMALL MESH AREA 1—Continued

Point	N. lat.	W. long.
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'

SMALL MESH AREA 2

Point	N. lat.	W. long.
SM13	43°05.6'	69°55.0'
SM14	43°10.1'	69°43.3'
SM15	42°49.5'	69°40.0'
SM16	42°41.5'	69°40.0'
SM17	42°36.6'	69°55.0'
SM13	43°05.6'	69°55.0'

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(8)(ii) (A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom:

(A) Eight inch (20.3 cm) diameter floats must be attached to the entire length of the headrope with a maximum spacing of 4 feet (12.2 cm) between floats;

(B) The ground gear must all be bare wire not larger than 1/2-inch (1.2 cm) for the top leg, not larger than 5/8-inch (1.6 cm) for the bottom leg, and not larger than 3/4-inch (1.9 cm) for the ground cables. The top and bottom legs must be equal in length with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms from the doors to wingends;

(C) The footrope must be at least 20 feet (6.1 m) longer than the length of the headrope; and

(D) The sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long dropper chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging must be made entirely of 5/16 inch (0.8 cm) diameter bare chain. No wrapping or

cookies are allowed on the chain. The total length of the sweep must be at least 7 feet (2.1 m) longer than the total length of the footrope, or 3.5 feet (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner (the quarter or the junction of the bottom wing to the belly at the footrope). The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at 8-foot (2.4-m) intervals from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 feet (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(9) *Nantucket Shoals dogfish fishery exemption area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(9)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. Lat.	W. Long.
NS1	41°45'	70°00'
NS2	41°45'	69°20'
NS3	41°30'	69°20'
CI1	41°30'	69°23'
NS5	41°26.5'	69°20'
NS6	40°50'	69°20'
NS7	40°50'	70°00'
NS1	41°45'	70°00'

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemp-

tion must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(9)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM/GB regulated mesh area, specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) The following species may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area under the exemption must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(10) *Scallop Dredge Fishery Exemption within the Gulf of Maine (GOM) Small Mesh Northern Shrimp Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or have used up their DAS allocations, and vessels issued a general scallop permit, may fish in the GOM Small Mesh Northern Shrimp Fishery Exemption Area when not under a NE multispecies DAS providing the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The GOM Scallop Dredge Fishery

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Exemption Area is the same as the area defined in paragraph (a)(3) of this section and designated as the Small Mesh Northern Shrimp Fishery Exemption Area.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in paragraph (a)(10) of this section, may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the GOM Scallop Dredge Fishery Exemption Area shall not exceed 10.5 ft (3.2 m) measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Western GOM Area Closure specified in §648.81(i).

(ii) [Reserved]

(11) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.44 m) measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified under paragraph (a)(9) of this section.

(12) *GOM/GB Monkfish Gillnet Exemption.* Unless otherwise prohibited in §648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(12)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35"	70°00'
42°49.5"	70°00'
42°49.5"	69°40'
43°12"	69°00'
(¹)	69°00'

¹ Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters (whichever is less).

(B) All gillnets must have a minimum mesh size of 10 inches (25.4 cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(13) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in §648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(12) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters (whichever is less).

(B) All gillnets must have a minimum mesh size of 6.5 inches (16.5 cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(b) *Southern New England (SNE) Regulated Mesh Area—(1) Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND REGULATED MESH AREA

Point	N. Lat.	W. Long.
G5	41°18.6'	66°24.8'
G6	40°55.5'	66°38'
G7	40°45.5'	68°00'
G8	40°37'	68°00'
G9	40°30.5'	69°00'
NL3	40°22.7'	69°00'
NL2	40°18.7'	69°40'
NL1	40°50'	69°40'
G11	40°50'	70°00'

SOUTHERN NEW ENGLAND REGULATED MESH
AREA—Continued

Point	N. Lat.	W. Long.
G12	170°00'

¹Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(2) *Gear restrictions*—(i) *Minimum mesh size*. Except as provided in paragraphs (b)(2) (i) and (iii) of this section, and unless otherwise restricted under paragraph (b)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl, not stowed and not available for immediate use in accordance with §648.23(b), by a vessel fishing under a DAS in the multispecies DAS program in the SNE regulated mesh area, is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh throughout the entire net, or any combination thereof. This minimum mesh size restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(ii) *Large Mesh vessels*. When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in §648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel or used by a vessel fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(iii) *Other restrictions and exemptions*. Vessels are prohibited from fishing in the SNE Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (8), (c), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in

§648.82(b)(3), if fishing under the scallop state waters exemption specified in §648.54, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in §648.81(e).

(3) *Exemptions*—(i) *Species exemptions*. Vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with the requirements specified in paragraph (b)(3)(ii) of this section.

(ii) *Possession and net stowage requirements*. Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (b)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with §648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (b)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; searobins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions*. Same as paragraph (a)(7) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* A vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish, skates, and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inches (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long. south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish, skates, and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10 inch (25.4 cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in §648.81(e)(4).

(7) *SNE Dogfish Gillnet Exemption Area.* A gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long. south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inches (15.24-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Regulated Mesh Area, provided that any dredge on board the vessel does not exceed 8 ft (2.44 m) measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY; to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5' N. lat. and 71°50.2' W. long.; east northeast through Block Island, RI, to 41°15' N. lat. and

71°07' W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species provided an exempted fishing permit is obtained from the Highly Migratory Species Division (HMS), Office of Sustainable Fisheries, NMFS, Gloucester, Massachusetts. The HMS reserves the authority to cap the number of participants who retain bonito as allowable incidental species should conservation and/or protected resource concerns develop.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5 inch (13.97 cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under §648.81(e) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to evaluate the likelihood of gear interactions with protected resources.

(c) *Mid-Atlantic regulated mesh area.*

(1) *Area definition.* The Mid-Atlantic Regulated Mesh Area is that area bounded on the east by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI) southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY, and from Race Point, Fishers Island, NY, southeasterly to the intersection of the 3-nautical mile line east of Montauk Point, southwesterly along the 3-nautical mile line to the intersection of 72°30' W. long. and south along that line to the intersection of the outer boundary of the EEZ.

(2) *Gear restrictions*—(i) *Minimum mesh size.* Except as provided in paragraph (i) of this section, and unless otherwise restricted under paragraph (c)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine, or midwater trawl in use or available for immediate use, as described in §648.23(b), by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by §648.104(a). This restriction does not apply to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Large mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program specified in §648.82(b) (6) and (7) is 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS program is 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 ft² (0.81 m²)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with §648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Additional exemptions.* The Regional Administrator may, using the process described in either paragraph (a)(7) (i) or (ii) of this section, authorize an exemption for a white hake fishery by vessels using regulated mesh or hook gear. Determination of the percentage of regulated species caught in such a fishery shall not include white hake.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area, and in the area described in §648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in §648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20' N. lat.;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) The vessel must carry a NMFS-approved sea sampler/observer, if requested by the regional Administrator.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements—(1) Gillnets.* Beginning October 15, 1996, mesh size of gillnet gear shall be measured by lining up five consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring ten consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the measurements of ten consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing—(1) Net obstruction or constriction.* A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (g)(1), head ropes are not considered part of the top of the trawl net.

(2) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching multispecies if the

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bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section and in §648.58(c)(6)(ii), a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under §648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in §648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board, unless otherwise restricted by §648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in §648.80 and may possess and land unlimited amounts of regulated species, unless otherwise restricted by §648.86(b). Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate

in the exemption program described by this section.

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (a)(3)(i), (a)(8)(i), (b)(3), and (c)(3) of this section when fishing in the areas specified under paragraphs (a)(3), (a)(8), (b)(1), and (c)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

(9) The vessel complies with all other applicable requirements.

[61 FR 34968, July 3, 1996, as amended at 61 FR 54106, Oct. 17, 1996; 61 FR 55777, Oct. 29, 1996; 61 FR 68165, Dec. 27, 1996; 62 FR 8406, Feb. 25, 1997; 62 FR 14649, Mar. 27, 1997; 62 FR 15387, Apr. 1, 1997; 62 FR 49149, Sept. 19, 1997; 63 FR 7730, Feb. 17, 1998; 63 FR 11595, Mar. 10, 1998; 63 FR 15330, Mar. 31, 1998; 63 FR 25416, May 8, 1998; 63 FR 40377, July 29, 1998; 63 FR 42592, Aug. 10, 1998; 63 FR 45966, Aug. 28, 1998; 64 FR 24073, May 5, 1999; 64 FR 31151, June 10, 1999; 64 FR 42048, Aug. 3, 1999]

§648.81 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a map depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section:

CLOSED AREA I		
Point	N. Lat.	W. Long.
Cl1	41°30'	69°23'
Cl2	40°45'	68°45'
Cl3	40°45'	68°30'
Cl4	41°30'	68°30'

CLOSED AREA I—Continued

Point	N. Lat.	W. Long.
CI1	41°30'	69°23'

(2) Paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies; or

(ii) Fishing with or using pelagic longline gear or pelagic hook and line gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies; or

(iii) Fishing with pelagic midwater trawl gear, consistent with §648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated multispecies, and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas.

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a map depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section, or unless exempt under the Georges Bank Sea Scallop Exemption Program specified under §648.58 during the time and in the portion of Closed Area II described in §648.58(b):

CLOSED AREA II

Point	N. Lat.	W. Long.
CI11	41°00'	67°20'
CI12	41°00'	66°35.8'
G5	41°18.6'	66°24.8' (the U.S.-Canada Maritime Boundary)
CI13	42°22'	67°20' (the U.S.-Canada Maritime Boundary)
CI1	41°00'	67°20'

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as described in paragraph (a)(2) of this section, or that are transiting the area provided—

(i) The operator has determined that there is a compelling safety reason; and

(ii) The vessel's fishing gear is stowed in accordance with the requirements of paragraph (e) of this section.

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a map depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section:

NANTUCKET LIGHTSHIP CLOSED AREA

Point	N. Lat.	W. Long.
G10	40°50'	69°00'
CN1	40°20'	69°00'
CN2	40°20'	70°20'
CN3	40°50'	70°20'
G10	40°50'	69°00'

(2) Paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraph (a)(2) of this section;

(ii) Fishing with or using dredge gear designed and used to take surf clams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies; or

(iii) Classified as charter, party or recreational vessel, provided that—

(A) If the vessel is a party or charter vessel, it has a letter of authorization

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issued by the Regional Administrator on board;

(B) Fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Cashes Ledge Closure Area, and the Western GOM Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), and (i)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

(e) *Gear stowage requirements.*

(1) *Nets.* In accordance with one of the methods specified in §648.23(b) and capable of being shown not to have been in recent use.

(2) *Scallop dredges.* The towing wire is detached from the scallop dredge, the towing wire is reeled up onto the winch, and the dredge is secured and covered so that it is rendered unusable for fishing.

(3) *Hook gear (other than pelagic).* All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear.* All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

(f) [Reserved]

(g) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, GOM Rolling Closure Areas I through V, as described in paragraphs (g)(1) (i) through (v) of this section, for the times specified in paragraphs (g)(1) (i) through (v) of this section, except as specified in paragraphs (d), and (g)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to §600.502 of this chapter)).

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I
(March 1–March 31)

Point	N. lat.	W. long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM5	42°00'	68°30'
GM6	42°30'	68°30'
GM9	42°30'	(1)

¹ Massachusetts shoreline.

² Cape Cod shoreline on Cape Cod Bay.

³ Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II
[April 1–April 30]

Point	N. lat.	W. long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM5	42°00'	68°30'
GM13	43°00'	68°30'
GM10	43°00'	(4)

¹ Massachusetts shoreline.

² Cape Cod shoreline on Cape Cod Bay.

³ Cape Cod shoreline on the Atlantic Ocean.

⁴ New Hampshire shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III
[May 1–May 31]

Point	N. lat.	W. long.
GM9	42°30'	(1)
GM6	42°30'	68°30'
GM14	43°30'	68°30'
GM18	43°30'	(2)

¹ Massachusetts shoreline.

² Maine shoreline.

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(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV
[June 1–June 30]

Point	N. lat.	W. long.
GM10	43°00'	(1)
GM11	43°00'	70°00'
GM17	43°30'	70°00'
GM19	43°30'	67°32.0' or (2)
GM20	44°00'	67°21.0' or (2)
GM21	44°00'	69°00'
GM22	(3)	69°00'

¹ New Hampshire shoreline.
² U.S.-Canada maritime boundary.
³ Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V
[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00'	(1)
GM2	42°00'	(2)
GM3	42°00'	(3)
GM4	42°00'	70°00'
GM8	42°30'	70°00'
GM9	42°30'	(1)

¹ Massachusetts shoreline.
² Cape Cod shoreline on Cape Cod Bay.
³ Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (g)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet, not longer than 300 ft (91.44 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are classified as charter, party, or recreational; or

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in §648.80(a)(10), provided the vessel does not retain any regulated multispecies during a trip, or on any part of a trip.

(h) *Cashes Ledge Closure Area.* (1) From July 1 through October 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

CASHES LEDGE CLOSURE AREA
[July 1–October 31]

Point	N. lat.	W. long.
CL1	43°07'	69°02'
CL2	42°49.5'	68°46'
CL3	42°46.5'	68°50.5'
CL4	42°43.5'	68°58.5'
CL5	42°42.5'	69°17.5'
CL6	42°49.5'	69°26'
CL1	43°07'	69°02'

(i) A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to §600.502 of this chapter).

(ii) [Reserved]

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That meet the criteria in paragraph (g)(2)(ii), (iii), or (iv) of this section.

(ii) [Reserved]

(i) *Western GOM Area Closure.* (1) From May 1, 1998, through April 30, 2001, no fishing vessel or person on a

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fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Area Closure (a chart depicting this area is available from the Regional Administrator upon request (see Table 1 to §600.502)), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (i)(2) of this section:

WESTERN GOM AREA CLOSURE

Point	N. lat.	W. long.
WGM1	42°15'	70°15'
WGM2	42°15'	69°55'
WGM3	43°15'	69°55'
WGM4	43°15'	70°15'
WGM1	42°15'	70°15'

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (g)(2)(ii) or (iii) of this section.

(j) *Restricted Gear Area I.* (1) *Restricted Gear Area I* is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 120		
69	40°07.9' N.	68°36.0' W.
70	40°07.2' N.	68°38.4' W.
71	40°06.9' N.	68°46.5' W.
73	40°08.1' N.	68°51.0' W.
74	40°05.7' N.	68°52.4' W.
75	40°03.6' N.	68°57.2' W.
76	40°03.65' N.	69°00.0' W.
77	40°04.35' N.	69°00.5' W.
78	40°05.2' N.	69°00.5' W.
79	40°05.3' N.	69°01.1' W.
80	40°08.9' N.	69°01.75' W.
81	40°11.0' N.	69°03.8' W.
82	40°11.6' N.	69°05.4' W.
83	40°10.25' N.	69°04.4' W.
84	40°09.75' N.	69°04.15' W.
85	40°08.45' N.	69°03.6' W.
86	40°05.65' N.	69°03.55' W.
87	40°04.1' N.	69°03.9' W.
88	40°02.65' N.	69°05.6' W.
89	40°02.00' N.	69°08.35' W.
90	40°02.65' N.	69°11.15' W.
91	40°00.05' N.	69°14.6' W.
92	39°57.8' N.	69°20.35' W.
93	39°56.65' N.	69°24.4' W.
94	39°56.1' N.	69°26.35' W.
95	39°56.55' N.	69°34.1' W.
96	39°57.85' N.	69°35.5' W.
97	40°00.65' N.	69°36.5' W.
98	40°00.9' N.	69°37.3' W.
99	39°59.15' N.	69°37.3' W.
100	39°58.8' N.	69°38.45' W.

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Point	Latitude	Longitude
102	39°56.2' N.	69°40.2' W.
103	39°55.75' N.	69°41.4' W.
104	39°56.7' N.	69°53.6' W.
105	39°57.55' N.	69°54.05' W.
106	39°57.4' N.	69°55.9' W.
107	39°56.9' N.	69°57.45' W.
108	39°58.25' N.	70°03.0' W.
110	39°59.2' N.	70°04.9' W.
111	40°00.7' N.	70°08.7' W.
112	40°03.75' N.	70°10.15' W.
115	40°05.2' N.	70°10.9' W.
116	40°02.45' N.	70°14.1' W.
119	40°02.75' N.	70°16.1' W.

Offshore Boundary

to 69		
120	40°06.4' N.	68°35.8' W.
121	40°05.25' N.	68°39.3' W.
122	40°05.4' N.	68°44.5' W.
123	40°06.0' N.	68°46.5' W.
124	40°07.4' N.	68°49.6' W.
125	40°05.55' N.	68°49.8' W.
126	40°03.9' N.	68°51.7' W.
127	40°02.25' N.	68°55.4' W.
128	40°02.6' N.	69°00.0' W.
129	40°02.75' N.	69°00.75' W.
130	40°04.2' N.	69°01.75' W.
131	40°06.15' N.	69°01.95' W.
132	40°07.25' N.	69°02.0' W.
133	40°08.5' N.	69°02.25' W.
134	40°09.2' N.	69°02.95' W.
135	40°09.75' N.	69°03.3' W.
136	40°09.55' N.	69°03.85' W.
137	40°08.4' N.	69°03.4' W.
138	40°07.2' N.	69°03.3' W.
139	40°06.0' N.	69°03.1' W.
140	40°05.4' N.	69°03.05' W.
141	40°04.8' N.	69°03.05' W.
142	40°03.55' N.	69°03.55' W.
143	40°01.9' N.	69°03.95' W.
144	40°01.0' N.	69°04.4' W.
146	39°59.9' N.	69°06.25' W.
147	40°00.6' N.	69°10.05' W.
148	39°59.25' N.	69°11.15' W.
149	39°57.45' N.	69°16.05' W.
150	39°56.1' N.	69°20.1' W.
151	39°54.6' N.	69°25.65' W.
152	39°54.65' N.	69°26.9' W.
153	39°54.8' N.	69°30.95' W.
154	39°54.35' N.	69°33.4' W.
155	39°55.0' N.	69°34.9' W.
156	39°56.55' N.	69°36.0' W.
157	39°57.95' N.	69°36.45' W.
158	39°58.75' N.	69°36.3' W.
159	39°58.8' N.	69°36.95' W.
160	39°57.95' N.	69°38.1' W.
161	39°54.5' N.	69°38.25' W.
162	39°53.6' N.	69°46.5' W.
163	39°54.7' N.	69°50.0' W.
164	39°55.25' N.	69°51.4' W.
165	39°55.2' N.	69°53.1' W.
166	39°54.85' N.	69°53.9' W.
167	39°55.7' N.	69°54.9' W.
168	39°56.15' N.	69°55.35' W.
169	39°56.05' N.	69°56.25' W.
170	39°55.3' N.	69°57.1' W.
171	39°54.8' N.	69°58.6' W.
172	39°56.05' N.	70°00.65' W.
173	39°55.3' N.	70°02.95' W.
174	39°56.9' N.	70°11.3' W.
175	39°58.9' N.	70°11.5' W.
176	39°59.6' N.	70°11.1' W.

Point	Latitude	Longitude
177	40°01.35' N.	70°11.2' W.
178	40°02.6' N.	70°12.0' W.
179	40°00.4' N.	70°12.3' W.
180	39°59.75' N.	70°13.05' W.
181	39°59.3' N.	70°14.0' W.
to 119		

(2) *Duration.* (i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area I unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 1		
49.	40°02.75' N.	70°16.1' W.
50.	40°00.7' N.	70°18.6' W.
51.	39°59.8' N.	70°21.75' W.
52.	39°59.75' N.	70°25.5' W.
53.	40°03.85' N.	70°28.75' W.
54.	40°00.55' N.	70°32.1' W.
55.	39°59.15' N.	70°34.45' W.
56.	39°58.9' N.	70°38.65' W.
57.	40°00.1' N.	70°45.1' W.
58.	40°00.5' N.	70°57.6' W.
59.	40°02.0' N.	71°01.3' W.
60.	39°59.3' N.	71°18.4' W.
61.	40°00.7' N.	71°19.8' W.
62.	39°57.5' N.	71°20.6' W.
63.	39°53.1' N.	71°36.1' W.
64.	39°52.6' N.	71°40.35' W.
65.	39°53.1' N.	71°42.7' W.
66.	39°46.95' N.	71°49.0' W.
67.	39°41.15' N.	71°57.1' W.
68.	39°35.45' N.	72°02.0' W.
69.	39°32.65' N.	72°06.1' W.
70.	39°29.75' N.	72°09.8' W.
to 48		
Offshore Boundary		
to 49		
1.	39°59.3' N.	70°14.0' W.
2.	39°58.85' N.	70°15.2' W.
3.	39°59.3' N.	70°18.4' W.
4.	39°58.1' N.	70°19.4' W.
5.	39°57.0' N.	70°19.85' W.
6.	39°57.55' N.	70°21.25' W.
7.	39°57.5' N.	70°22.8' W.
8.	39°57.1' N.	70°25.4' W.

Point	Latitude	Longitude
9.	39°57.65' N.	70°27.05' W.
10.	39°58.58' N.	70°27.7' W.
11.	40°00.65' N.	70°28.8' W.
12.	40°02.2' N.	70°29.15' W.
13.	40°01.0' N.	70°30.2' W.
14.	39°58.58' N.	70°31.85' W.
15.	39°57.05' N.	70°34.35' W.
16.	39°56.42' N.	70°36.8' W.
21.	39°58.15' N.	70°48.0' W.
24.	39°58.3' N.	70°51.1' W.
25.	39°58.1' N.	70°52.25' W.
26.	39°58.05' N.	70°53.55' W.
27.	39°58.4' N.	70°59.6' W.
28.	39°59.8' N.	71°01.05' W.
29.	39°58.2' N.	71°05.85' W.
30.	39°57.45' N.	71°12.15' W.
31.	39°57.2' N.	71°15.0' W.
32.	39°56.3' N.	71°18.95' W.
33.	39°51.4' N.	71°36.1' W.
34.	39°51.75' N.	71°41.5' W.
35.	39°50.05' N.	71°42.5' W.
36.	39°50.0' N.	71°45.0' W.
37.	39°48.95' N.	71°46.05' W.
38.	39°46.6' N.	71°46.1' W.
39.	39°43.5' N.	71°49.4' W.
40.	39°41.3' N.	71°55.0' W.
41.	39°39.0' N.	71°55.6' W.
42.	39°36.72' N.	71°58.25' W.
43.	39°35.15' N.	71°58.55' W.
44.	39°34.5' N.	72°00.75' W.
45.	39°32.2' N.	72°02.25' W.
46.	39°32.15' N.	72°04.1' W.
47.	39°28.5' N.	72°06.5' W.
48.	39°29.0' N.	72°09.25' W.
to 70.		

(2) *Duration.* (i) *Mobile Gear.* From November 27 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area II unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From June 16 through November 26, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area II.

(l) *Restricted Gear Area III.* (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
to 49		
182	40°05.6' N.	70°17.7' W.
183	40°06.5' N.	70°40.05' W.
184	40°11.05' N.	70°45.8' W.
185	40°12.75' N.	70°55.05' W.
186	40°10.7' N.	71°10.25' W.
187	39°57.9' N.	71°28.7' W.

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Point	Latitude	Longitude
188	39°55.6' N.	71°41.2' W.
189	39°55.85' N.	71°45.0' W.
190	39°53.75' N.	71°52.25' W.
191	39°47.2' N.	72°01.6' W.
192	39°33.65' N.	72°15.0' W.
to 70		
Offshore Boundary		
to 182		
49	40°02.75' N.	70°16.1' W.
50	40°00.7' N.	70°18.6' W.
51	39°59.8' N.	70°21.75' W.
52	39°59.75' N.	70°25.5' W.
53	40°03.85' N.	70°28.75' W.
54	40°00.55' N.	70°32.1' W.
55	39°59.15' N.	70°34.45' W.
56	39°58.9' N.	70°38.65' W.
57	40°00.1' N.	70°45.1' W.
58	40°00.5' N.	70°57.6' W.
59	40°02.0' N.	71°01.3' W.
60	39°59.3' N.	71°18.4' W.
61	40°00.7' N.	71°19.8' W.
62	39°57.5' N.	71°20.6' W.
63	39°53.1' N.	71°36.1' W.
64	39°52.6' N.	71°40.35' W.
65	39°53.1' N.	71°42.7' W.
66	39°46.95' N.	71°49.0' W.
67	39°41.15' N.	71°57.1' W.
68	39°35.45' N.	72°02.0' W.
69	39°32.65' N.	72°06.1' W.
70	39°29.75' N.	72°09.8' W.
to 192		

(2) *Duration.* (i) *Mobile gear.* From June 16 through November 26, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area III unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area.

(ii) *Lobster pot gear.* From January 1 through April 30, no fishing vessel with lobster pot gear or person on a fishing vessel with lobster pot gear may fish, and no lobster pot gear may be deployed or remain, in Restricted Gear Area III.

(m) *Restricted Gear Area IV.* (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
Inshore Boundary		
193	40°13.60' N.	68°40.60' W.
194	40°11.60' N.	68°53.00' W.
195	40°14.00' N.	69°04.70' W.
196	40°14.30' N.	69°05.80' W.
197	40°05.50' N.	69°09.00' W.
198	39°57.30' N.	69°25.10' W.
199	40°00.40' N.	69°35.20' W.
200	40°01.70' N.	69°35.40' W.

Point	Latitude	Longitude
201	40°01.70' N.	69°37.40' W.
202	40°00.50' N.	69°38.80' W.
203	40°01.30' N.	69°45.00' W.
204	40°02.10' N.	69°45.00' W.
205	40°07.60' N.	70°04.50' W.
206	40°07.80' N.	70°09.20' W.
to 119		
Offshore Boundary		
69	40°07.90' N.	68°36.00' W.
70	40°07.20' N.	68°38.40' W.
71	40°06.90' N.	68°46.50' W.
72	40°08.70' N.	68°49.60' W.
73	40°08.10' N.	68°51.00' W.
74	40°05.70' N.	68°52.40' W.
75	40°03.60' N.	68°57.20' W.
76	40°03.65' N.	69°00.00' W.
77	40°04.35' N.	69°00.50' W.
78	40°05.20' N.	69°00.50' W.
79	40°05.30' N.	69°01.10' W.
80	40°08.90' N.	69°01.75' W.
81	40°11.00' N.	69°03.80' W.
82	40°11.60' N.	69°05.40' W.
83	40°10.25' N.	69°04.40' W.
84	40°09.75' N.	69°04.15' W.
85	40°08.45' N.	69°03.60' W.
86	40°05.65' N.	69°03.55' W.
87	40°04.10' N.	69°03.90' W.
88	40°02.65' N.	69°05.60' W.
89	40°02.00' N.	69°08.35' W.
90	40°02.65' N.	69°11.15' W.
91	40°00.05' N.	69°14.60' W.
92	39°57.80' N.	69°20.35' W.
93	39.56.75' N.	69°24.40' W.
94	39°56.50' N.	69°26.35' W.
95	39.56.80' N.	69°34.10' W.
96	39°57.85' N.	69°35.05' W.
97	40°00.65' N.	69°36.50' W.
98	40°00.90' N.	69°37.30' W.
99	39°59.15' N.	69°37.30' W.
100	39°58.80' N.	69°38.45' W.
102	39°56.20' N.	69°40.20' W.
103	39°55.75' N.	69°41.40' W.
104	39°56.70' N.	69°53.60' W.
105	39°57.55' N.	69°54.05' W.
106	39°57.40' N.	69°55.90' W.
107	39°56.90' N.	69°57.45' W.
108	39°58.25' N.	70°03.00' W.
110	39°59.20' N.	70°04.90' W.
111	40°00.70' N.	70°08.70' W.
112	40°03.75' N.	70°10.15' W.
115	40°05.20' N.	70°10.90' W.
116	40°02.45' N.	70°14.1' W.
119	40°02.75' N.	70°16.1' W.
to 206		

(2) *Duration.* (i) *Mobile gear.* From June 16 through September 30, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish, or be in Restricted Gear Area IV unless transiting. Vessels may transit this area provided that all mobile

gear is on board the vessel while inside the area.

[61 FR 34968, July 3, 1996, as amended at 61 FR 55777, Oct. 29, 1996; 62 FR 9379, Mar. 3, 1997; 62 FR 10748, Mar. 10, 1997; 62 FR 15388, Apr. 1, 1997; 63 FR 7730, Feb. 17, 1998; 63 FR 11595, Mar. 10, 1998; 63 FR 15331, Mar. 31, 1998; 63 FR 25416, May 8, 1998; 64 FR 24075, May 5, 1999; 64 FR 31151, June 10, 1999; 64 FR 42048, Aug. 3, 1999]

§ 648.82 Effort-control program for limited access vessels.

(a) *General.* Except as provided in § 648.17, a vessel issued a limited access multispecies permit may not fish for, possess, or land regulated species, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year, may carry over a maximum of 10 DAS into the next year. DAS sanctioned vessels will be credited with unused DAS based on their DAS allocation minus total DAS sanctioned.

(2) [Reserved]

(b) *DAS program—permit categories, allocations and initial assignments to categories.* Beginning with the 1996 fishing year, all limited access multispecies permit holders shall be assigned to one of the following DAS permit categories according to the criteria specified. Permit holders may request a change in permit category for the 1996 fishing year and all fishing years thereafter, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year.

(1) *Individual DAS category—(i) DAS allocation.* A vessel fishing under the Individual DAS category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, multiplied by the proration factor of 0.833 for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 50 percent of its initial allo-

cation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment.* Any vessel issued a valid limited access multispecies Individual DAS permit as of July 1, 1996, except those that have been issued a gillnet permit, shall be initially assigned to the Individual DAS category.

(2) *Fleet DAS category—(i) DAS allocation.* A vessel fishing under the Fleet DAS category shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.833) for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 88 DAS for the 1997 fishing year and beyond.

(ii) *Initial assignment.* Any vessel issued a valid Fleet DAS permit, Gillnet permit, limited access Hook-Gear permit, or a vessel issued a Less than or equal to 45 ft (13.7 m) permit that is larger than 20 ft (6.1 m) in length as determined by its most recent permit application, as of July 1, 1996, shall be initially assigned to the Fleet DAS category.

(3) *Small vessel category—(i) DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip without being subject to DAS restrictions, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip. Such a vessel is not subject to a possession limit for other NE multispecies.

(ii) *Initial assignment.* A vessel issued a valid limited access multispecies permit and fishing under the small vessel category (less than or equal to 45 ft (13.7 m)) permit as of July 1, 1996, and that is 20 ft (6.1 m) or less in length as determined by the vessel's last application for a permit, shall be initially assigned to the small vessel category. Any other vessel may elect to switch into this category, as provided for in § 648.4(a)(1)(i)(I)(2), if such vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall as determined by measuring along a horizontal line

drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the overall length divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a multispecies permit.

(D) Adjustments to the small vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(4) *Hook-Gear category*—(i) *DAS allocation*. Any vessel issued a valid limited access multispecies Hook-Gear permit shall be allocated 116 DAS (139 DAS multiplied by the proration factor of 0.833) for the 1996 fishing year and 88 DAS for the 1997 fishing year and beyond. A vessel fishing under this category in the DAS program must meet or comply with the following while fishing for, in possession of, or landing regulated species:

(A) Vessels, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel.

(B) Vessels, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unbaited hook and gangion that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited.

(ii) *Initial assignment*. No vessel shall be initially assigned to the Hook-Gear category. Any vessel that meets the qualifications specified in § 648.4(a)(1)(i) may apply for and obtain a permit to fish under this category.

(5) *Combination vessel category*—(i) *DAS allocation*. A vessel fishing under the Combination Vessel category shall be allocated 65 percent of its initial 1994 allocation baseline, as established under Amendment 5 to the NE Multispecies FMP, multiplied by the proration factor of 0.833 for the 1996 fishing year, unless a vessel qualifies for a restoration of DAS under paragraph (j) of this section, and 50 percent of its initial allocation baseline for the 1997 fishing year and beyond, as calculated under paragraph (d)(1) of this section.

(ii) *Initial assignment*. A vessel issued a valid limited access multispecies permit qualified to fish as a combination vessel as of July 1, 1996, shall be assigned to the combination vessel category.

(6) *Large Mesh Individual DAS category*—(i) *DAS allocation*. A vessel fishing under the Large Mesh Individual DAS category shall be allocated a DAS increase of 12 percent in year 1 and 36 percent in year 2 and beyond over the DAS allocations specified in paragraph (b)(1)(i) of this section (this includes the proration factor for 1996). To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish with gillnet gear with a minimum size of 7-inch (17.78 cm) diamond mesh or with trawl gear with a minimum mesh size of 8-inch (20.32 cm) diamond mesh, for the entire year, as described under § 648.80(a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment*. No vessel shall be initially assigned to the large mesh individual DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(1)(2).

(7) *Large Mesh Fleet DAS category*—(i) *DAS allocation*. A vessel fishing under the Large Mesh Fleet DAS category shall be allocated 129 DAS (155 DAS multiplied by the proration factor of 0.833) for the 1996 fishing year, unless a vessel qualifies for a restoration of

DAS under paragraph (j) of this section, and 120 DAS for the 1997 fishing year, and beyond. To be eligible to fish under the Large Mesh Fleet DAS category, a vessel while fishing under this category must fish with gillnet gear with a minimum mesh size of 7-inch (17.78-cm) diamond mesh or trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond mesh, as described under § 648.80(a)(2)(ii), (b)(2)(ii), and (c)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the large mesh fleet DAS category. Any vessel that is initially assigned to the individual DAS, fleet DAS, or small vessel category may request and be granted a switch into this category as specified in § 648.4(a)(1)(i)(1)(2).

(c) *1996 DAS appeals.* (1) *Previously exempted vessels.* A vessel that was issued a valid 1995 limited access multispecies permit, and that has been fishing under the small vessel (less than or equal to 45 ft (13.7 m)), hook-gear, or gillnet categories, is eligible to appeal its allocation of DAS, if it has not previously done so, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996-1997 reductions).

(2) *Exempted gillnet vessels that held an individual DAS permit.* A vessel that was issued a valid 1995 limited access multispecies permit and that has been fishing under both the gillnet and individual DAS categories, is eligible to appeal its allocation of gillnet DAS, as described under paragraph (d)(2) of this section. Each vessel's initial allocation of DAS will be considered to be 176 DAS for purposes of this appeal (i.e., the fleet DAS category baseline prior to the 1996-1997 reductions).

(d) *Individual DAS allocations—(1) Calculation of a vessel's individual DAS.* The DAS assigned to a vessel for purposes of determining that vessel's annual allocation under the individual DAS program is calculated as follows:

(i) Count the total number of the vessel's NE multispecies DAS for the years 1988, 1989, and 1990. NE multispecies DAS are deemed to be the total number of days the vessel was absent

from port for a trip where greater than 10 percent of the vessel's total landings were comprised of regulated species, minus any days for such trips in which a scallop dredge was used;

(ii) Exclude the year of least NE multispecies DAS; and

(iii) If 2 years of multispecies DAS are remaining, average those years' DAS; or

(iv) If only 1 year remains, use that year's DAS.

(2) *Appeal of DAS allocation—(i) Initial allocations of individual DAS to those vessels authorized to appeal under paragraph (c) of this section may be appealed to the Regional Administrator if a request to appeal is received by the Regional Administrator no later than August 31, 1996, or 30 days after the initial allocation is made, whichever is later. Any such appeal must be in writing and be based on one or more of the following grounds:*

(A) The information used by the Regional Administrator was based on mistaken or incorrect data.

(B) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(C) The applicant has new or additional information.

(ii) The Regional Administrator will appoint a designee who will make an initial decision on the written appeal.

(iii) If the applicant is not satisfied with the initial decision, the applicant may request that the appeal be presented at a hearing before an officer appointed by the Regional Administrator.

(iv) The hearing officer shall present his/her findings to the Regional Administrator and the Regional Administrator will make a decision on the appeal. The Regional Administrator's decision on this appeal is the final administrative decision of the Department of Commerce.

(3) *Status of vessels pending appeal of DAS allocations.* While a vessel's individual DAS allocation is under appeal, the vessel may fish under the fleet DAS category until the Regional Administrator has made a final determination on the appeal. Any DAS spent fishing for regulated species by a vessel while that vessel's initial DAS allocation is under appeal, shall be counted against

any DAS allocation that the vessel may ultimately receive.

(e) *Accrual of DAS.* Same as §648.53(e).

(f) *Good Samaritan credit.* Same as §648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel permit under paragraph (b)(3) of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access multispecies permit must declare out and be out of the NE multispecies DAS program, as described in paragraph (b) of this section, for a 20-day period between March 1 and May 31 of each calendar year using the notification requirements specified in §648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery as described in §648.80. If a vessel owner has not declared and been out for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive. If a vessel has taken a spawning season 20-day block out of the NE multispecies DAS program during May 1996, it is not required to take a 20-day block out of the NE multispecies DAS program in 1997. Beginning January 1, 1998, any such vessel must comply with the spawning season restriction specified in this part.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery if designated as a Day gillnet category vessel, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in §648.10.

(i) *Adjustments in annual DAS allocations.* Adjustments in annual DAS allocations, if required to meet fishing mortality goals, may be made by the

Regional Administrator following the framework procedures of §648.90.

(j) *Restoration of unused DAS.* Vessels that held valid 1996 Amendment 5 NE multispecies permits in the Individual, Fleet or Combination Vessel categories are eligible for restoration of unused DAS if DAS fished during May and June 1996 was less than one-sixth of their 1996 Amendment 7 allocation. Restoration of DAS will be based on the NE multispecies permit category held on August 16, 1996. These vessels will be automatically credited with DAS equal to the difference between the proration reduction and their DAS fished during May and June 1996, as recorded in the NMFS call-in system specified at §648.10(c) (or on other verifiable evidence of days spent fishing for multispecies). If the number of DAS fished during this time period exceeded the proration reduction amount, those days will not be subtracted from a vessel's 1996 allocation.

(k) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit fishing under a multispecies DAS with gillnet gear must obtain an annual designation as either a Day gillnet or Trip gillnet vessel as described in §648.4(c)(2)(iii)(B).

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a multispecies DAS is not required to remove gillnet gear from the water upon returning to the dock and calling-out of the DAS program, provided:

(i) *Number and size of nets.* Vessels may not fish with, haul, possess, or deploy more than 80 roundfish gillnets or 160 flatfish gillnets. Vessels may fish any combination of roundfish and flatfish gillnets, up to 160 nets, provided that the number of roundfish and flatfish gillnets does not exceed the limitations specified in this subparagraph, and the nets are tagged in accordance with paragraph (k)(1)(ii) of this section. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning June 1, 1997, when under a NE multispecies DAS, all roundfish gillnets fished, hauled, possessed, or deployed must have two tags per net, with one tag secured to each bridle of every net within a string of nets and all flatfish

gillnets fished, hauled, possessed, or deployed must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in §648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer.

(iii) All gillnet gear is brought to port prior to the vessel fishing in an exempted fishery.

(iv) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by §648.82(g) will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken, any or all of the remaining periods of time required by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with §648.81(e)(4), while fishing under a multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time out following the notification procedures specified in §648.10(f)(2).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear. However, the vessel may fish in an exempted fishery as described in §648.80, or it may fish under a multispecies DAS provided it fishes with gear other than non-exempted gillnet gear.

(v) *Method of counting DAS.* Day gillnet vessels fishing with gillnet gear under a multispecies DAS will accrue

15 hours DAS for each trip greater than 3 hours but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours or greater than 15 hours.

(vi) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(vii) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received before tags will be re-issued.

(2) *Trip gillnet vessels.* When fishing under a multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling-out of a multispecies DAS under §648.10(c)(3). When not fishing under a multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear as authorized under the exemptions described in §648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator, that the vessel is a Trip gillnet vessel.

[61 FR 34968, July 3, 1996, as amended at 62 FR 2620, Jan. 17, 1997; 62 FR 14650, Mar. 27, 1997; 62 FR 15388, Apr. 1, 1997; 62 FR 37156, July 11, 1997; 62 FR 49149, Sept. 19, 1997; 63 FR 11595, Mar. 10, 1998; 63 FR 42592, Aug. 10, 1998; 64 FR 24076, May 5, 1999]

EFFECTIVE DATE NOTE: At 64 FR 42045, Aug. 3, 1999, §648.82 was amended by suspending paragraph (b)(3)(i) and adding paragraph (b)(3)(iii), effective Aug. 3, 1999 through Jan. 30, 2000. For the convenience of the user, the added text follows:

§648.82 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(3) * * *

(iii) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and

yellowtail flounder, combined, per trip without being subject to DAS restrictions, provided that the amount of cod on board does not exceed the daily cod limit specified in §648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip. Such a vessel is not subject to a possession limit for other NE multispecies.

* * * * *

§648.83 Minimum fish sizes.

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in §648.89. Except as provided in §648.17, all other vessels are subject to the following minimum fish sizes (TL):

MINIMUM FISH SIZES (TL)	
Species	Size (Inches)
Cod	19 (48.3 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.48 cm)
Redfish	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in §648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining com-

pliance with the possession limits specified in §648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess multispecies frames used, or to be used, as bait that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in §648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions as specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under §648.90.

[61 FR 34968, July 3, 1996, as amended at 61 FR 49277, Sept. 19, 1996; 63 FR 11595, Mar. 10, 1998; 63 FR 42592, Aug. 10, 1998; 64 FR 24076, May 5, 1999]

§648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to gillnets and longlines, designed for, capable of, or fishing for NE multispecies must have the name of the owner or vessel, or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or

longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM/GB regulated mesh area specified in §648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

§648.85 Flexible Area Action System.

(a) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies, shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the FEDERAL REGISTER requesting public comments in accordance with the procedures therefor in Amendment 3 to the NE Multispecies FMP.

(b) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(c) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(d) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(e) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the FEDERAL REGISTER and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(f) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the FEDERAL REGISTER.

(g) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the Federal Register. The Regional Administrator may determine that facts warrant a delayed effective date.

§ 648.86 Possession restrictions.

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock*—(1) *NE multispecies DAS vessels*. (i) Except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, a vessel that fishes under a NE multispecies DAS may land up to 2,000 lb (907.2 kg) of haddock per DAS fished, or any part of a DAS fished, up to 20,000 lb (9071.8 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) When the Regional Administrator projects that 75 percent of the target TAC will be harvested (9.3 million lb (4,218.5 mt) for the 1999 fishing year), NMFS may publish a notification in the FEDERAL REGISTER that, as of a specific date, the limit specified in paragraph (a)(1)(i) of this section is reduced to either a 1,000 lb (453.6 kg) per trip possession limit restriction, or to a landing limit restriction of 1,000 lb (453.6 kg) per DAS fished, 10,000 lb (4,536.0 kg) maximum, depending on the risk of exceeding the target TAC. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this landing limit must have at least one standard tote on board.

(iii) Paragraph (a)(1)(ii) of this section notwithstanding, beginning October 1, 1999, through April 30, 2000, if the Regional Administrator projects that less than 75 percent of the target TAC will be harvested (9.3 million lb (4,218.5 mt) for the 1999 fishing year) by April 30, 2000, NMFS may publish a notification in the FEDERAL REGISTER that, as of a specific date, the limit is increased to the amount that the Regional Administrator projects will be sufficient to allow harvesting of at least 9.3 million lb (4,218.5 mt) by April 30, 2000. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this landing limit must have at least one standard tote on board.

(2) *Scallop dredge vessels*. (i) No person owning or operating a scallop dredge vessel issued a multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel, from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without a multispecies permit may possess haddock in, or harvested from, the EEZ, from January 1 through June 30.

(iii) Except for vessels fishing under the Georges Bank Sea Scallop Exemption Program from July 1 through December 31, 1999, as provided in § 648.58(c)(6)(ii), scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Cod*—(1) *Gulf of Maine Cod Landing Limit*. (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 200 lb (90.7 kg) of cod per DAS, or any part of a DAS, unless otherwise specified in this paragraph. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized part of a DAS (less than 24 hours) may land up to an additional 200 lb (90.7 kg) of cod for that part of a DAS; however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the part of the DAS utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 400 lb (181.4 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). When

the Regional Administrator projects that 30 percent of the FMAX target TAC will be harvested (886,000 lb (402 mt) for the 1999 fishing year), NMFS will publish a notification in the FEDERAL REGISTER that, as of a specific date, the limit is reduced to a specified amount between 5 lb (2.3 kg) and 100 lb (45.3 kg) per DAS, depending on the risk of exceeding the target TAC. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in paragraph (b)(1)(i) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(ii), may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port to engage in fishing, unless transiting as allowed in paragraph (b)(3) of this section, until sufficient time has elapsed to account for and justify the amount of cod harvested at the time of offloading regardless of whether all of the cod on board is offloaded (e.g., a vessel subject to the landing limit restriction, described in paragraph (b)(1)(i) of this section, that has called-in to the multispecies DAS program at 3 p.m. on Monday and that fishes and comes back into port at 4 p.m. on Wednesday of that same week with 800 lb (362.9 kg) of cod to offload some or all of its catch cannot call-out of the DAS program or leave port until 3:01 p.m. the next day, Thursday (i.e., 3 days plus one minute)); and

(B) Upon returning to port and before offloading, the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502 of this chapter for the Regional Administrator's address) and provides the following information: Vessel name and permit number, owner and caller name, DAS confirmation number, phone number, and the hail weight of cod on board and the amount of cod to be offloaded, if any. A vessel that has not exceeded the landing limit

and is offloading and ending its trip by calling out of the multispecies DAS program does not have to report under this call-in system.

(iii) A vessel that has not exceeded the cod landing limit restrictions described in paragraph (b)(1)(i) of this section and that is offloading some or all of its catch without calling out of the multispecies DAS program under § 648.10(c)(3), is subject to the call-in requirement described in paragraph (b)(1)(ii)(B) of this section.

(2) *Georges Bank Cod Landing and Maximum Possession Limits.* For the 1999 fishing year, beginning August 15, 1999, and,

(i) For each fishing year thereafter, beginning on May 1, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section fishing under a NE multispecies DAS may land only up to 2,000 lb (907.2 kg) of cod per DAS, or any part of a DAS, up to a maximum possession limit of 20,000 lb (9,071.8 kg) per trip, unless otherwise specified pursuant to paragraph (b)(2)(ii) of this section. The vessel must have a standard tote on board. Cod on board a vessel subject to these landing and maximum possession limits must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) When the Regional Administrator projects that 75 percent of the target TAC will be harvested (8.9 million lb (4,012 mt) for the 1999 fishing year), NMFS may publish a notification in the FEDERAL REGISTER that, as of a specific date, the landing and/or maximum possession limits specified in paragraph (b)(2) of this section are reduced to a level calculated to keep landings below the target TAC based on the risk of exceeding the target TAC. Cod on board a vessel subject to these landings and maximum possession limits must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) Paragraph (b)(2)(i) of this section notwithstanding, between January 1, and April 30 of each fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC (8.9 million lb (4,012 mt) for the 1999 fishing year) will be harvested by April

30, of the fishing year, NMFS may publish a notification in the FEDERAL REGISTER that, as of a specific date, the landings and/or maximum possession limits are increased to the amount that the Regional Administrator projects will be sufficient to allow harvesting of up to 8.9 million lb (4,012 mt) for the 1999 fishing year by April 30, 2000.

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraph (b)(1) of this section, and is, therefore, subject to the requirement to remain in port for the period of time described in paragraph (b)(1)(ii)(A) of this section may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to §600.502 of this chapter) either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting and provides the following information: vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in §648.81(e) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of a line beginning at the Cape Cod, MA coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°20' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 30 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of §648.81(e).

(c) *Other possession restrictions.* Vessels are subject to all other applicable possession limit restrictions as specified under §648.58(c)(6), §648.82(b)(3), §648.83(b)(1), §648.88(a) and (c), and §648.89(c).

(d) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraph (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under §648.83(a) and (b) will be multiplied by 3.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14650, Mar. 27, 1997; 62 FR 15389, Apr. 1, 1997; 62 FR 37157, July 11, 1997; 63 FR 11595, Mar. 10, 1998; 63 FR 15332, Mar. 31, 1998; 63 FR 42592, Aug. 10, 1998; 64 FR 24076, May 5, 1999; 64 FR 31151, June 10, 1999; 64 FR 42048, Aug. 3, 1999]

EFFECTIVE DATE NOTE: At 64 FR 42045, Aug. 3, 1999, §648.86 was amended by suspending paragraphs (b)(1)(i), (b)(1)(ii)(A), and (b)(3) and revising paragraphs (b)(1)(iv) and (b)(5), effective Aug. 3, 1999 through Jan. 30, 2000. For the convenience of the user, the revised text is set forth as follows:

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* * * * *

(b) * * *

(1) * * *

(iv) *Landing limit.* Notwithstanding any other provisions of this part, the following measures shall be in effect from August 3, 1999 until January 30, 2000. Except as provided in paragraph (b)(2) of this section, and subject to the call-in provision specified in §648.10(f)(3)(iii), a vessel fishing under a NE multispecies DAS may land only up to 100 lb (45.4 kg) of cod during the first 24-hour period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to a 100 lb (45.4 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hours, a vessel may land up to an additional 100 lbs (45.4 kg) for each additional 24-hour

block of DAS fished, or part of an additional 24-hour block of DAS fished, up to a maximum of 500 lb (226.8 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hours or less, but more than 24 hours, may land up to but no more than 200 lb (90.7 kg) of cod). A vessel that has only been called into part of an additional 24-hour block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hours but less than 48 hours) may land up to an additional 100 lb (45.4 kg) of cod for that trip provided that the vessel complies with the following:

(A) The vessel operator does not call out of the DAS program as described under §648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(5) of this section, until the rest of the additional 24-hour block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hours, at the time of landing, may land only up to 200 lb (90.7 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hours have elapsed from the beginning of the trip).

(B) Comply with paragraph (b)(1)(ii)(B) of this section.

(C) Vessels must have at least one standard tote on board. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(5) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraph (b)(1) of this section, and is therefore, subject to the requirement to remain in port for the period of time described in paragraph (b)(1)(iv) of this section may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to §600.502 of this chapter) either at the time the vessel reports its hauled weight of cod or at a later time prior to transiting and provides the following information: vessel name and permit number, destination port, time of departure, and estimated time of arrival.

A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in §648.81(e) and may not have any fish on board the vessel.

* * * * *

§648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) *Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes.* All persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), (2), (3) and (4) of this section must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in §648.81(g)(2)(ii)), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of §648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in §648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in §648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of §648.81(e)(4), sink gillnets or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in §648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section.

(1) *Mid-coast Closure Area.* (i) From September 15 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Mid-coast

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Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(1)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

MID-COAST CLOSURE AREA

Point	N. latitude	W. longitude
MC1	42°30'	(1)
MC2	42°30'	70°15'
MC3	42°40'	70°15'
MC4	42°40'	70°00'
MC5	43°00'	70°00'
MC6	43°00'	69°30'
MC7	43°30'	69°30'
MC8	43°30'	69°00'
MC9	(2)	69°00'

¹ Massachusetts shoreline.
² Maine shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Mid-coast Closure Area, as defined under paragraph (a)(1)(i) of this section, from September 15 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements found at §229.33(b) of this title.

(2) *Cape Cod South Closure Area.* (i) From December 1 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Cape Cod South Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(2)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD SOUTH CLOSURE AREA

Point	N. latitude	W. longitude
CCS1	(1)	71°45'
CCS2	40°40'	71°45'
CCS3	40°40'	70°30'
CCS4	(2)	70°30'

¹ RI Shoreline.
² MA Shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Cape Cod South Closure Area, as defined under paragraph (a)(2)(i) of this section, from December 1 through the last

day of February and April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements found at §229.33(b) of this title.

(3) *Massachusetts Bay Closure Area.* (i) From December 1 through May 31 of each fishing year, the restrictions and requirements specified in paragraph (a) of this section apply to the Massachusetts Bay Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), except as provided in paragraph (a)(3)(ii) of this section, which is the area bounded by straight lines connecting the following points in the order stated.

MASSACHUSETTS BAY CLOSURE AREA

Point	N. latitude	W. longitude
MB1	42°30'	(1)
MB2	42°30'	70°30'
MB3	42°12'	70°30'
MB4	42°12'	70°00'
MB5	(2)	70°00'
MB6	42°00'	(2)
MB7	42°00'	(1)

¹ Massachusetts shoreline.
² Cape Cod shoreline.

(ii) Vessels subject to the restrictions and regulations specified in paragraph (a) of this section may fish in the Massachusetts Bay Closure Area, as defined under paragraph (a)(3)(i) of this section, from December 1 through the last day of February and April 1 through May 31 of each fishing year, provided that pingers are used in accordance with the requirements found at §229.33(b) of this title.

(4) *NE Closure Area.* From August 15 through September 13, of each fishing year, the restrictions and requirements specified in this paragraph (a) apply to the NE Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

NORTHEAST CLOSURE AREA

Point	N. lat.	W. long.
NE1	(1)	68°55.0'
NE2	43°29.6'	68°55.0'
NE3	44°04.4'	67°48.7'
NE4	44°06.9'	67°52.8'
NE5	44°31.2'	67°02.7'
NE6	(1)	67°02.7'

¹ Maine shoreline.

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(i) Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) [Reserved]

(b) *Areas closed to gillnet gear capable of catching multispecies to prevent right whale takes.* All persons owning or operating vessels must remove all of their sink gillnet gear and gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in §648.81(g)(2)(ii)), from the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of §648.81(e)(4), sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in §648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in §648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of §648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in §648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

(1) *Cape Cod Bay Critical Habitat Closure Area.* From March 27, 1997 through May 15, 1997 and from January 1 through May 15 of each subsequent year, the restrictions and requirements specified in paragraph (b) of this section apply to the Cape Cod Bay Critical Habitat Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), which is the area bounded by straight lines connecting the following points in the order stated.

CAPE COD BAY CRITICAL HABITAT CLOSURE AREA

Point	N. latitude	W. longitude
CCB1	42°12' N	70°30' W
CCB2	42°12' N	70°15' W
CCB3	42°08' N	70°12.4' W
Then westerly along the 3 NM state boundary to.		
CCB4	42°08' N	70°30' W
Then due north to CCB1.		

(2) *Great South Channel Critical Habitat Closure Area.* From April 1 through June 30 of each year, the restrictions and requirements specified in paragraph (b) of this section apply to the Great South Channel Critical Habitat Closure Area (copies of a chart depicting this area are available from the Regional Administrator upon request), which is the area bounded by straight lines connecting the following points in the order stated.

GREAT SOUTH CHANNEL CRITICAL HABITAT CLOSURE AREA

Point	N. latitude	W. longitude
GSC1	41°02.2' N	69°02' W
GSC2	41°43.5' N	69°36.3' W
GSC3	42°10' N	68°31' W
GSC4	41°38' N	68°13' W

(c) *Framework adjustment.* (1) The Harbor Porpoise Take Reduction Team will provide the NEFMC with the best available information on the status of Gulf of Maine harbor porpoise, including estimates of abundance and estimates of bycatch in the sink gillnet fishery.

(2) After receiving and reviewing the Harbor Porpoise Take Review Team's findings and recommendations, the NEFMC shall determine whether adjustments or additional management measures are necessary to avoid inconsistencies with the Harbor Porpoise Take Reduction Plan. If the NEFMC determines that adjustments or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings.

(3) The NEFMC shall provide the public with advance notice of the availability of the proposals, appropriate rationale, economic and biological analyses, and opportunity to comment on them prior to and at the second

NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the categories specified under § 648.90(b)(1).

(4) If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the factors specified in § 648.90(b)(2).

(5) The Regional Administrator may accept, reject, or with NEFMC approval, modify the NEFMC's recommendation, including the NEFMC's recommendation to issue a final rule, as specified under § 648.90(b)(3).

[61 FR 34968, July 3, 1996, as amended at 61 FR 47828, Sept. 11, 1996; 62 FR 52274, Oct. 7, 1997; 62 FR 52274, Oct. 7, 1997; 63 FR 15333, Mar. 31, 1998; 63 FR 19850, Apr. 22, 1998; 64 FR 15706, Apr. 1, 1999; 64 FR 24077, May 5, 1999]

§ 648.88 Open access permit restrictions.

(a) *Handgear permit.* A vessel issued a valid open access multispecies handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

(2) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(b) *Charter/party permit.* A vessel that has been issued a valid open access multispecies charter/party permit is subject to the restrictions on gear, recreational minimum fish sizes and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop multispecies possession limit permit.* Unless otherwise prohibited in § 648.86(b), and except as provided in § 648.58(c)(6)(ii) for vessels fishing under the Georges Bank Sea Scallop Exemp-

tion Program, a vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

(d) A vessel issued a valid open access nonregulated multispecies permit may possess and land nonregulated multispecies. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provisions of this part.

[61 FR 34968, July 3, 1996, as amended at 61 FR 39910, July 31, 1996; 64 FR 24078, May 5, 1999; 64 FR 31151, June 10, 1999]

EFFECTIVE DATE NOTE: At 64 FR 42045, Aug. 3, 1999, § 648.88 was amended by suspending paragraph (a)(1) and adding paragraph (a)(3), effective Aug. 3, 1999 through Jan. 30, 2000. For the convenience of the user, the added text is set forth as follows:

§ 648.88 Open access permit restrictions.

(a) * * *

(3) Notwithstanding any other provisions of this part, the following measures shall be in effect from August 3, 1999 until January 30, 2000. The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(b)(1)(iv), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

§ 648.89 Recreational and charter/party restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under §§ 648.23(b) and 648.81(e) (2), (3), and (4).

(b) *Recreational minimum fish sizes—(1) Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are subject to minimum fish sizes (TL) as follows:

Species	Inches	
	1996	1997+
Cod	20 (50.8 cm)	21 (53.3 cm)
Haddock	20 (50.8 cm)	21 (53.3 cm)
Pollock	19 (48.3 cm)	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)	14 (35.6 cm)
Winter flounder (blackback)	12 (30.5 cm)	12 (30.5 cm)
Redfish	9 (22.9 cm)	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legalized fish and are not offered or intended for sale, trade or barter.

(c) *Possession restrictions.* Each person on a recreational vessel may not possess more than 10 cod and/or haddock, combined, in or harvested from the EEZ.

(1) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing fillet number by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(2) Cod and haddock harvested by recreational vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons aboard. If there is a violation of the possession limit on board a vessel carrying more than one

person, the violation shall be deemed to have been committed by the owner and operator.

(3) Cod and haddock must be stored so as to be readily available for inspection.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or a recreational fishing vessels fishing in the EEZ.

§ 648.90 Framework specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC consideration on any changes, adjustment or additions to DAS allocations, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC shall review available data pertaining to: Catch and landings, DAS and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The MSMC must demonstrate through analysis and documentation that the options it develops are expected to meet the NE Multispecies FMP goals and objectives. The MSMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; and any

other management measures currently included in the NE Multispecies FMP.

(3) The NEFMC shall review the recommended target TACs and all of the options developed by the MSMC and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective that is consistent with the other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MSMC, unless rejected by the NEFMC, as specified in paragraph (a)(6) of this section, provided the option meets the NE Multispecies FMP objective and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. Included in the NEFMC's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

(5) If the NEFMC submits, on or before January 7, a recommendation to the Regional Administrator after one NEFMC meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the NEFMC's recommendation in the FEDERAL REGISTER as a proposed rule. The FEDERAL REGISTER notification of the proposed action will provide a 30-day public comment period. The NEFMC may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b) of this section and requests that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the NEFMC's recommendation meets the NE Multispecies FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as

a final rule, the action will be published as a final rule in the FEDERAL REGISTER. If the Regional Administrator concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Administrator concurs in the NEFMC's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about April 1 of each year, with the exception noted in paragraph (a)(5) of this section. If the NEFMC fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the NEFMC, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

(b) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Northeast Multispecies FMP or to address gear conflicts as defined under §600.10 of this chapter.

(1) *Adjustment process.* After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from

one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, and any other management measures currently included in the FMP.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflict as defined under 50 CFR 600.10, in accordance with the procedure specified in §648.55(d) and (e).

(3) *NEFMC recommendation.* After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Administrator. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the NEFMC recommends that the management measures should be issued as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(iv) Whether there will be a continuing evaluation of management

measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the NEFMC's recommendation includes adjustments or additions to management measures and, after reviewing the NEFMC's recommendation and supporting information:

(i) If the Regional Administrator concurs with the NEFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If the Regional Administrator concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the NEFMC recommendation, the measures will be issued as a final rule in the FEDERAL REGISTER.

(iii) If the Regional Administrator does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(c) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

[61 FR 34968, July 3, 1996, as amended at 62 FR 1405, Jan. 10, 1997; 62 FR 14650, Mar. 27, 1997]

Subpart G—Management Measures for the Summer Flounder Fisheries

§648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.30 in 1997, and the F that produces the maximum yield per recruit (F_{max}) in 1998 and thereafter, provided the allowable levels of fishing in 1997 may not exceed

18,518,830 lb (8,400 mt), unless such fishing levels have an associated F of F_{max} ; Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls on the mortality of summer flounder; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Summer Flounder Monitoring Committee shall recommend to the Demersal Species Committee of the MAFMC and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

- (1) Commercial quota set from a range of 0 to the maximum allowed to achieve the specified F .
- (2) Commercial minimum fish size.
- (3) Minimum mesh size.
- (4) Recreational possession limit set from a range of 0 to 15 summer flounder to achieve the specified F .
- (5) Recreational minimum fish size.
- (6) Recreational season.
- (7) Restrictions on gear other than otter trawls.

(8) Adjustments to the exempted area boundary and season specified in § 648.104(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraph (a) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent, by weight.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Summer Flounder Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend to the Re-

gional Administrator measures necessary to assure that the applicable specified F will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER by October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish a proposed rule in the FEDERAL REGISTER by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure that the applicable specified F will not be exceeded. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to assure that the applicable specified F will not be exceeded.

(d) *Distribution of annual quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

ANNUAL COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.04756
New Hampshire	0.00046
Massachusetts	6.82046
Rhode Island	15.68298
Connecticut	2.25708
New York	7.64699
New Jersey	16.72499
Delaware	0.01779
Maryland	2.03910
Virginia	21.31676
North Carolina	27.44584

(2) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for summer flounder

may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for summer flounder may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for summer flounder must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder FMP and Magnuson Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notice of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notice of the approval of the transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (d) of this section.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14650, Mar. 27, 1997; 62 FR 66310, Dec. 18, 1997]

§ 648.101 Closures.

(a) *EEZ closure.* The Regional Administrator shall close the EEZ to fishing for summer flounder by commercial vessels for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he/she determines that the inaction of one or more states will cause the applicable F specified in § 648.100(a) to be exceeded, or if the commercial fisheries in all states have been closed. The Regional Administrator may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. The Regional Administrator shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its commercial quota has been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state.

§ 648.102 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(3)

§ 648.103

and any person subject to the possession limit may fish for summer flounder only from May 29 through September 11. This time period may be adjusted pursuant to the procedures in § 648.100.

[64 FR 48967, Sept. 9, 1999]

§ 648.103 Minimum fish sizes.

(a) The minimum size for summer flounder is 14 inches (35.6 cm) TL for all vessels issued a moratorium permit under § 648.4 (a)(3), except on board party and charter boats carrying passengers for hire or carrying more than three crew members, if a charter boat, or more than five crew members, if a party boat;

(b) The minimum size for summer flounder is 15 inches (38 cm) TL for all vessels that do not qualify for a moratorium permit, and party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, or charter boats holding a moratorium permit if fishing with more than three crew members.

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

[61 FR 34968, July 3, 1996, as amended at 62 FR 10478, Mar. 7, 1997; 62 FR 37157, July 11, 1997; 62 FR 63875, Dec. 3, 1997; 63 FR 27868, May 21, 1998]

§ 648.104 Gear restrictions.

(a) *General.* (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

(2) Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm in 8 cm and a thickness of 2.3 mm

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inserted into the meshes under a pressure or pull of 5 kg. The mesh size is the average of the measurement of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(b) *Exemptions.* The minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to:

(1) Vessels issued a summer flounder moratorium permit and fishing from November 1 through April 30 in the "exemption area," which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ. Vessels fishing with a summer flounder exemption permit shall not fish west of the line. Vessels issued a permit under § 648.4(a)(3)(iii) may transit the area west or south of the line, if the vessel's fishing gear is stowed in a manner prescribed under § 648.100(e), so that it is not "available for immediate use" outside the exempted area. The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent, by weight, of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish notification in the FEDERAL REGISTER terminating the exemption for the remainder of the exemption season.

(2) Vessels fishing with a two-seam otter trawl fly net with the following configuration, provided that no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) are on board:

(i) The net has large mesh in the wings that measures 8 inches (20.3 cm) to 64 inches (162.6 cm).

(ii) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches (20.3 cm).

(iii) The mesh decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net.

(3) The Regional Administrator may terminate this exemption if he/she determines, after a review of sea sampling data, that vessels fishing under the exemption, on average, are discarding more than 1 percent of their entire catch of summer flounder per trip. If the Regional Administrator makes such a determination, he/she shall publish a notice in the FEDERAL REGISTER terminating the exemption for the remainder of the calendar year.

(c) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.2 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (c), head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in § 648.104(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 648.100(a).

(d) *Mesh obstruction or constriction.* (1) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (c) of this section, that obstructs the meshes of the net in any manner.

(2) No person on any vessel may possess or fish with a net capable of catching summer flounder in which the bars

entering or exiting the knots twist around each other.

(e) *Stowage of nets.* Otter trawl vessels retaining 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30, and subject to the minimum mesh size requirement of paragraph (a)(1) of this section may not have "available for immediate use" any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use is considered to be not "available for immediate use."

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.100.

[61 FR 34968, July 3, 1996, as amended at 62 FR 63876, Dec. 3, 1997]

§ 648.105 Possession restrictions.

(a) No person shall possess more than eight summer flounder in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) If whole summer flounder are processed into fillets, the number of fillets will be converted to whole summer flounder at the place of landing by dividing the fillet number by two. If summer flounder are filleted into single (butterfly) fillets, each fillet is deemed to be from one whole summer flounder.

(c) Summer flounder harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of summer flounder on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.104(f), may not retain 100 lb (45.3 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.6 kg) or more of summer flounder from November 1 through April 30. Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in³ (2.5 ft³ or 70.79 cm³).

[61 FR 34968, July 3, 1996, as amended at 62 FR 37157, July 11, 1997; 63 FR 27868, May 21, 1998]

§ 648.106 Sea turtle conservation.

This section will be suspended during the effectiveness of any temporary regulations issued to regulate incidental take of sea turtles in the summer flounder fishery under authority of the ESA under parts 222 and 223 of this title. Such suspensions and temporary regulations will be issued by publication in the FEDERAL REGISTER and will be effective for a specified period of time, not to exceed 1 year.

(a) *Sea turtle handling and resuscitation.* The sea turtle handling and resuscitation requirements specified in § 223.206(d)(1) of this title apply with respect to sea turtles incidentally taken by a vessel fishing for summer flounder.

(b) *Sea turtle monitoring and assessment program.* (1) The Regional Administrator will establish a monitoring and assessment program, in coopera-

tion with the MAFMC and the State of North Carolina, to measure the incidental take of sea turtles in the summer flounder fishery, monitor compliance with required conservation measures by trawlers, and predict interactions between the fishery and sea turtles to prevent turtle mortalities.

(2) A scientifically designed, observer-based monitoring program in accordance with § 648.11 may be used to gather scientific data measuring the incidental take of turtles by trawlers in the summer flounder fishery and to report turtle distribution and abundance.

(3) A cooperative sea turtle monitoring and assessment program utilizing a variety of information, including aerial and vessel surveys; onboard observers; individually tagged turtles; physical parameters, such as sea surface temperatures, and reports from the sea turtle stranding network; and other relevant and reliable information, will assess and predict turtle distribution, abundance, movement patterns, and timing to provide information to NMFS to prevent turtle mortality caused by the summer flounder fishery.

(c) *Required use of Turtle Excluder Devices (TED).* The Regional Administrator will require the use of a NMFS-approved TED by any vessels engaged in summer flounder fishing operations and utilizing trawl gear on or after October 15 as necessary to protect sea turtles. The Regional Administrator will publish notification in the FEDERAL REGISTER with the specific time period. Descriptions of NMFS-approved TEDs can be found in § 223.207(b)(1) of this title. This requirement applies to vessels within the EEZ bounded on the north by a line along 37°05' N. lat., bounded on the south by a line along 33°35' N. lat.

(d) *Closure of the fishery.* The Regional Administrator may close the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the FEDERAL REGISTER. The Regional Administrator

shall take such action if he/she determines a closure is necessary to avoid jeopardizing the continued existence of any species listed under the ESA. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program. A closure will be applicable to those areas specified in the notification and for the period specified in the notification. The Regional Administrator will provide as much advance notice as possible, consistent with the requirements of the ESA, and will have the closure announced on channel 16 of the marine VHF radio. A closure may prohibit all fishing operations, may prohibit the use of certain gear, may require that gear be stowed, or may impose similar types of restrictions on fishing activities. The prohibitions, restrictions, and duration of the closure will be specified in the notification.

(e) *Reopening of the fishery.* (1) The Regional Administrator may reopen the summer flounder fishery in the EEZ, or any part thereof, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the FEDERAL REGISTER. The Regional Administrator may reopen the summer flounder fishery in the EEZ, or any part thereof, if additional sea turtle conservation measures are implemented and if projections of NMFS' sea turtle monitoring program indicate that such measures will ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(2) The Regional Administrator may reopen the summer flounder fishery in the EEZ, or any part thereof, if the sea turtle monitoring program indicates changed conditions and if projections of the sea turtle monitoring program indicate that NMFS can ensure that continued operation of the summer flounder fishery is not likely to jeopardize the continued existence of any species listed under the ESA.

(f) *Additional sea turtle conservation measures.* (1) The Regional Adminis-

trator may impose additional sea turtle conservation measures, including tow-time requirements, in the EEZ, after consultation with the MAFMC, the Director of the State of North Carolina Division of Marine Fisheries, and the marine fisheries agency of any other affected state, by publishing notification in the FEDERAL REGISTER. The Regional Administrator shall take such action if he/she determines further measures are necessary to avoid jeopardizing the continued existence of any species listed under the ESA or if such action would allow reopening of the summer flounder fishery in the EEZ. The determination of the impact on sea turtles must be based on turtle mortalities and projections of turtle mortality by the NMFS monitoring and assessment program.

(2) Consistent with the procedures specified in §648.10, the Regional Administrator may require that all or a certain portion of the vessels engaged in fishing for summer flounder carry observers, consistent with the requirements of §648.10, to gather data on incidental capture of sea turtles and to monitor compliance with required conservation measures. This requirement may apply to certain types of vessels, certain areas, or during certain times of the year.

(g) *Experimental projects.* Notwithstanding paragraphs (a) through (f) of this section, the Regional Administrator may authorize summer flounder fishing, as a part of experimental projects to measure turtle capture rates, to monitor turtle abundance, to test alternative gear or equipment, or for other research purposes. Research must be approved by the Regional Administrator, and it must not be likely to jeopardize the continued existence of any species listed under the ESA. The Regional Administrator will impose such conditions as he/she determines necessary to ensure adequate turtle protection during experimental projects. Individual authorizations may be issued in writing. Authorizations applying to multiple vessels will be published in the FEDERAL REGISTER.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14651, Mar. 27, 1997; 64 FR 14077, Mar. 23, 1999]

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

(a) Through March 9, 2000, states may implement on an annual basis conservation equivalent measures that reduce the recreational catch to the same extent as the annual Federal summer flounder measures specified under § 648.100(c) to achieve the recreational harvest limit in any year. These measures would be a different combination of minimum fish sizes, possession limits, and closed seasons that are the conservation equivalent of those Federal summer flounder measures specified on an annual basis.

(b) A determination of equivalency would be made annually for any state proposing alternative recreational measures by the Summer Flounder Technical Committee of the Commission. Conservation equivalent measures may be implemented by any state without a determination of equivalency by the Summer Flounder Technical Committee review, but only if states use the state-specific tables provided by the Commission and maintain a 15-inch (38-cm) or greater minimum fish size.

(1) Once a state receives a determination of equivalency from the Summer Flounder Technical Committee or a state implements conservation equivalent measures contained in the state-specific table provided by the Commission, the Commission will recommend to the Regional Administrator that a notification be published in the FEDERAL REGISTER to waive the annual Federal summer flounder measures specified under § 648.100(c) and to notify vessel permit holders of the equivalent measures approved by the Summer Flounder Technical Committee for landing summer flounder in that state.

(2) States electing not to implement conservation equivalent measures or states that did not receive a determination of equivalency from the Summer Flounder Technical Committee and not implementing conservation equivalent measures contained in the state-specific table provided by the Commission would be required to implement the annual Federal summer flounder measures specified under § 648.100(c) in accordance with the pro-

visions of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries.

[64 FR 48967, Sept. 9, 1999]

Subpart H—Management Measures for the Scup Fishery

SOURCE: 61 FR 43426, Aug. 23, 1996, unless otherwise noted.

§ 648.120 Catch quotas and other restrictions.

(a) *Annual review.* The Scup Monitoring Committee shall review the following data, subject to availability, on or before August 15 of each year. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve an exploitation rate of 47 percent in 1997, 1998, and 1999, 33 percent in 2000 and 2001, and 19 percent in 2002 and thereafter: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Scup Monitoring Committee shall recommend the following measures to the Demersal Species Committee of the MAFMC and the Commission to assure that the exploitation rate specified in paragraph (a) of this section will not be exceeded:

(1) The commercial quota for each of the three periods specified in paragraph (d)(1) of this section, to be set from a range of 0 to the maximum allowed to achieve the specified exploitation rate. The commercial quota will be established by estimating the annual total allowable catch (TAC), allocating it into the three periods, and deducting the discard estimates for each period.

(2) Landing limits for the Winter I and Winter II periods.

(3) Percent of landings attained at which the landing limit for the Winter I period will be reduced.

(4) Commercial minimum fish size.

(5) Minimum mesh size.

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(6) Recreational possession limit set from a range of 0 to 50 scup to achieve the specified exploitation rate.

(7) Recreational minimum fish size set from a range of 7 inches (17.8 cm) TL to 10 inches (25.4 cm) TL.

(8) Recreational season.

(9) Restrictions on gear.

(10) Season and area closures in the commercial fishery.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC shall review these recommendations and, based on these recommendations and any public comment, recommend to the Regional Administrator measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER by October 15 to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, landing limits for the Winter I and Winter II periods, the percentage of landings attained during the Winter I fishery at which the landing limits will be reduced, a recreational harvest limit and additional management measures for the commercial fishery. NMFS will publish a proposed rule in the FEDERAL REGISTER by February 15 to implement additional management measures for the recreational fishery, if the Regional Administrator determines that such measures are necessary to assure that the specified exploitation rate will not be exceeded. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the annual measures.

(d) *Distribution of Commercial Quota.*

(1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January–April	45.11
Summer–May–October	38.95
Winter II—November–December	15.94

(2) The Winter I and Winter II commercial quotas will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) The Summer commercial quota will be allocated to the coastal states from Maine through North Carolina, based upon the following percentages:

SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL QUOTA SHARES

State	Share (percent)
Maine	0.13042
New Hampshire	0.00004
Massachusetts	15.49120
Rhode Island	60.56589
Connecticut	3.39884
New York	17.05295
New Jersey	3.14307
Delaware	0.00000
Maryland	0.01286
Virginia	0.17789
North Carolina	0.02690
Total	100.00000

(4) All scup landed for sale in any state during either Winter I or Winter II shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested. All scup landed for sale in a state during the Summer period shall be applied against that state's summer commercial quota, regardless of where the scup were harvested.

(5) All scup landed for sale in any state during the period January 1, 1997, through April 30, 1997, shall be applied against the coastwide commercial quota for the 1997 Winter I period, regardless of where the scup were harvested. Any landings during that time in excess of the 1997 Winter I commercial quota will be subtracted from the 1997 Winter II period's allocation. Any overage beyond the 1997 Winter II allocation will be deducted from subsequent winter periods.

(6) Beginning in 1997, any overages of the commercial quota landed in any

state during the Summer period will be deducted from that state's Summer period quota for the following year. Beginning in 1998, any overages of the commercial quota landed in any Winter period will be subtracted from the period's allocation for the following year.

(7) Based upon any changes in the landings data available from the states for the base years 1983–92, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (d)(3) of this section and the period allocations specified in paragraph (d)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the FEDERAL REGISTER to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the FEDERAL REGISTER to implement the changes in allocation.

(e) *Quota transfers and combinations.* Any state implementing a state commercial quota for scup may request approval from the Regional Administrator to transfer part or all of its Summer period quota to one or more states. Two or more states implementing a state commercial quota for scup may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for scup must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his or her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate

state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall Summer period quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Summer Flounder, Scup, and Black Sea Bass FMP and the Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the Summer period for which the request was made and will be effective upon the filing by NMFS of a notification of approval of the quota transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notice that the Regional Administrator has disapproved the previous request or when notification of approval of the quota transfer or combination has been filed at the Office of the Federal Register.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the Summer period, the overage will be deducted from the following Summer period's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous Summer period. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall Summer period quota specified in paragraph (d) of this section.

[61 FR 43426, Aug. 23, 1996, as amended at 62 FR 27984, May 22, 1997]

§ 648.121 Closures.

(a) *Winter closures.* The Regional Administrator will monitor the harvest of commercial quota for each Winter period based on dealer reports, state data, and other available information and shall determine the date when the

commercial quota for a Winter period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the FEDERAL REGISTER advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) *Summer closure.* The Regional Administrator will monitor the Summer period state commercial quota based on dealer reports, state data, and other available information, and shall determine the date when a state's commercial quota will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising a state that, effective upon a specific date, its Summer period commercial quota has been harvested and notifying vessel and dealer permit holders that no Summer period commercial quota is available for landing scup in that state for the remainder of the period.

[62 FR 27985, May 22, 1997]

§ 648.122 Season and area restrictions.

If the MAFMC determines through its annual review process that seasonal restrictions or area closures are necessary for the commercial or recreational sectors to assure that the exploitation rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 648.120.

§ 648.123 Gear restrictions.

(a) *Trawl vessel gear restrictions—(1) Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who possess 200 lb or more (90.7 kg or more) of scup from November 1 through April 30 or 100 lb or more (45.4 kg or more) of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the

terminus of the codend to the head rope, excluding any turtle excluder device extension. Scup on board these vessels shall be stored separately and kept readily available for inspection.

(2) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure specified in § 648.104(a)(2).

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirement in paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes are not considered part of the top of the regulated portion of a trawl net.

(4) *Mesh obstruction or constriction.* (i) The owner or operator of a fishing vessel subject to the minimum mesh restriction in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on or in the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirement in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining

4,000 lb or more (1,814 kg or more) of scup and subject to the minimum mesh requirement in paragraph (a)(1) of this section, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that conforms to one of the methods specified in §648.23(b) and that can be shown not to have been in recent use is considered to be not “available for immediate use.”

(6) *Roller gear.* The owner or operator of an otter trawl vessel issued a moratorium permit pursuant to §648.4(a)(6) shall not use roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

(7) *Procedures for changes.* The minimum net mesh and the threshold catch level at which it is required set forth in paragraph (a)(1) of this section, and the maximum roller diameter set forth in paragraph (a)(6) of this section, may be changed following the procedures in §648.120.

(b) *Pot and trap gear restrictions.* Owners or operators of vessels subject to this part must fish with scup pots or traps that comply with the following:

(1) *Degradable hinges.* A scup pot or trap must have degradable hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of $\frac{3}{16}$ inches (4.8 mm) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(2) *Escape vents.* (i) All scup pots or traps that have a circular escape vent with a minimum of 3.1 inches (7.9 cm) in diameter, or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side, or an equivalent rectangular escape vent.

(ii) The minimum escape vent size set forth in paragraph (b)(2)(i) of this section may be revised following the procedures in §648.120.

(3) *Pot and trap identification.* Pots or traps used in fishing for scup must be marked with a code of identification

that may be the number assigned by the Regional Administrator and/or the identification marking as required by the vessel’s home port state.

[61 FR 43426, Aug. 23, 1996, as amended at 61 FR 56126, Oct. 31, 1996; 62 FR 12107, Mar. 14, 1997; 63 FR 72215, Dec. 31, 1998]

§648.124 Minimum fish sizes.

(a) The minimum size for scup is 9 inches (22.9 cm) TL for all vessels issued a moratorium permit under §648.4(a)(6). If such a vessel is also issued a charter and party boat permit and is carrying passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat, then the minimum size specified in paragraph (b) of this section applies.

(b) The minimum size for scup is 7 inches (17.8 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in §648.120.

§648.125 Possession limit.

(a) Pursuant to the procedures in §648.120, the Regional Administrator may limit the number of scup that may be possessed in or harvested from the EEZ north of 35°15.3' N. lat. by persons aboard vessels that have not been issued a valid moratorium permit.

(b) If whole scup are processed into fillets, an authorized officer will convert the number of fillets to whole scup at the place of landing by dividing fillet number by 2. If scup are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole scup.

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of scup on board by the number of persons aboard other than the captain and

crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(d) Scup and scup parts harvested by a vessel with a moratorium or charter or party boat scup permit, or in or from the EEZ north of 35°15.3' N. lat., may not be landed with the skin removed.

§ 648.126 Protection of threatened and endangered sea turtles.

This section supplements existing regulations issued to regulate incidental take of sea turtles under authority of the Endangered Species Act under 50 CFR parts 222 and 223. In addition to the measures required under those parts, NMFS will investigate the extent of take in flynet gear and if deemed appropriate, may develop and certify a Turtle Excluder Device for that gear.

[61 FR 43426, Aug. 23, 1996, as amended at 64 FR 14077, Mar. 23, 1999]

Subpart I—Management Measures for the Black Sea Bass Fishery

SOURCE: 61 FR 58467, Nov. 15, 1996, unless otherwise noted.

§ 648.140 Catch quotas and other restrictions.

(a) *Annual review.* The Black Sea Bass Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 48 percent for black sea bass in 1998, 1999, and 2000; a target exploitation rate of 37 percent in 2001 and 2002; and a target exploitation rate of 23 percent (based on F_{max}) in 2003 and subsequent years: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are

unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the Council and the Commission the following measures to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded:

(1) A commercial quota allocated to quarterly periods set from a range of (0) to the maximum allowed to achieve the specified target exploitation rate specified in paragraph (a) of this section. Implementation of this measure will begin in 1998.

(2) A commercial trip limit for all moratorium vessels set from a range of (0) to the maximum allowed to assure that the quarterly quota is not exceeded.

(3) Commercial minimum fish size.

(4) Minimum mesh size in the codend or throughout the net and the catch threshold that will require compliance with the minimum mesh requirement.

(5) Escape vent size.

(6) A recreational possession limit set from a range of (0) to the maximum allowed to achieve the target exploitation rate specified in paragraph (a) of this section. Implementation of this measure will begin in 1998.

(7) Recreational minimum fish size.

(8) Recreational season. This measure may be adjusted beginning in 1998.

(9) Restrictions on gear other than otter trawls and pots or traps.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations and, based on the recommendations and

public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Administrator will review these recommendations and any recommendations of the Commission. After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER by October 15 to implement a commercial quota and a recreational harvest limit, and additional management measures for the commercial fishery, and will publish a proposed rule in the FEDERAL REGISTER by February 15 to implement additional management measures for the recreational fishery, if he or she determines that such measures are necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded.

(d) *Distribution of annual quota.* (1) Beginning January 1, 1998, a commercial quota will be allocated by quarterly periods based upon the following percentages:

QUARTERLY COMMERCIAL QUOTA SHARES	
Quarter	Share (percent)
January-March	38.64
April-June	29.26
July-September	12.33
October-December	19.77

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against that quarter's commercial quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through

Maine by any vessel without a moratorium permit and fishing exclusively in state waters will be counted against the quota by the state in which it is landed pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. The Regional Administrator will determine the date on which the quarterly quota will be harvested and the EEZ north of 35°15.3' N. lat. closed. The Regional Administrator will publish a notice in the FEDERAL REGISTER advising that, upon that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. Any overages of the commercial quarterly quota landed will be deducted from that quarter's quota for the following year.

§ 648.141 Closure.

EEZ closure. The Regional Administrator shall close the EEZ to fishing for black sea bass by commercial vessels issued a moratorium permit for the remainder of the calendar year by publishing notification in the FEDERAL REGISTER if he or she determines that the action or inaction of one or more states will cause the applicable target exploitation rate specified in § 648.140(a) to be exceeded. The Regional Administrator may reopen the EEZ if earlier action or inaction by a state has been remedied by that state without causing the applicable specified target exploitation rate to be exceeded.

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(6) and fishermen subject to the possession limit may not fish for black sea bass from August 1 through August 15. This time period may be adjusted pursuant to the procedures in § 648.140.

[63 FR 27868, May 21, 1998]

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 10 inches (25.4 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) that fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.140.

(b) The minimum size for black sea bass is 10 inches (25.4 cm) TL for all vessels that do not qualify for a moratorium permit, and party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, or charter boats, holding a moratorium permit if fishing with more than three crew members. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

(c) The minimum size in this section applies to the whole fish or any part of a fish found in possession (e.g., fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

[61 FR 58467, Nov. 15, 1996, as amended at 63 FR 27868, May 21, 1998]

§ 648.144 Gear restrictions.

(a) *Trawl gear restrictions*—(1) *General.*

(i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 1,000 lb or more (453.6 kg or more) of black sea bass per trip, must fish with nets that have a minimum mesh size of 4.0 inches (10.2 cm) diamond or 3.5 inches (8.9 cm) square (inside measure) mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum established pursuant to paragraph (a)(1)(i) of this section.

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets.* Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have "available for immediate use" any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent

with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use, is considered to be not “available for immediate use.”

(5) *Roller gear.* Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions—(1) Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel’s USCG documentation number or state registration number.

(2) *Escape vents.* All black sea bass traps or pots must have an escape vent placed in a lower corner of the parlor portion of the pot or trap which complies with one of the following minimum sizes: 1.125 inches (2.86 cm) by 5.75 inches (14.61 cm); or a circular vent 2 inches (5.08 cm) in diameter; or a square vent with sides of 1.5 inches (3.81 cm), inside measure; however, black sea bass traps or pots constructed of wooden laths may instead have an escape vent constructed by leaving a space of at least 1.125 inches (2.86 cm) between one set of laths in the parlor portion of the trap. The dimensions for escape vents and lath spacing may be adjusted pursuant to the procedures in § 648.140.

(3) *Ghost panel.* Black sea bass traps or pots must contain a ghost panel affixed to the trap or pot with degradable fasteners and hinges. The opening to be covered by the ghost panel must measure at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm). The ghost panel must be affixed to the pot or trap with hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

[61 FR 58467, Nov. 15, 1996, as amended at 62 FR 25138, May 8, 1997; 62 FR 66310, Dec. 18, 1997]

§ 648.145 Possession limit.

A possession limit will be established pursuant to the procedures in § 648.140 to assure that the recreational harvest limit is not exceeded.

(a) If whole black sea bass are processed into fillets, an authorized officer will convert the number of fillets to whole black sea bass at the place of landing by dividing fillet number by two. If black sea bass are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole black sea bass.

(b) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

(c) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(6) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.144(a)(4), may not retain 1,000 lb (453.6 kg) or more of black sea bass. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4-kg) tote.

[61 FR 58467, Nov. 15, 1996, as amended at 63 FR 11160, Mar. 6, 1998]

§ 648.146 Special management zones.

The recipient of a Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the Council as a special management zone (SMZ). The SMZ will prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification. The establishment of an

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SMZ will be effected by a regulatory amendment pursuant to the following procedure:

(a) A SMZ monitoring team comprised of members of staff from the Mid-Atlantic FMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report considering the following criteria:

- (1) Fairness and equity.
- (2) Promotion of conservation.
- (3) Avoidance of excessive shares.

(4) Consistency with the objectives of Amendment 9 to the Fishery Management Plan for the Summer Flounder, Scup and Black Sea Bass fisheries, the Magnuson-Stevens Act, and other applicable law.

(5) The natural bottom in and surrounding potential SMZs.

(6) Impacts on historical uses.

(b) The Council Chairman may schedule meetings of Industry Advisors and/or the Scientific and Statistical Committee to review the report and associated documents and to advise the Council. The Council Chairman may also schedule public hearings.

(c) The Council, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Administrator that a SMZ be approved. Such a recommendation will be accompanied by all relevant background information.

(d) The Regional Administrator will review the Council's recommendation. If the Regional Administrator concurs in the recommendation, he or she will publish a proposed rule in the FEDERAL REGISTER in accordance with the recommendations. If the Regional Administrator rejects the Council's recommendation, he or she shall advise the Council in writing of the basis for the rejection.

(e) The proposed rule shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Administrator will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the administrative record and consistent

with the Magnuson-Stevens Act and other applicable law.

Subpart J—Management Measures for the Atlantic Bluefish Fishery

SOURCE: 62 FR 13300, Mar. 20, 1997, unless otherwise noted.

§ 648.160 Fishing year.

The fishing year is from January 1 through December 31.

§ 648.161 Possession limit.

(a) *Possession limit.* (1) No person shall possess more than ten bluefish unless he/she has a permit meeting the requirements of § 648.4(a)(8).

(2) Bluefish caught while in possession of a permit meeting the requirements of § 648.4(a)(8) must be kept separate from the pooled catch and in the possession of the permit holder at all times.

(3) If Atlantic bluefish are filleted into two or more sections, such fillets shall be deemed to be whole Atlantic bluefish using a ratio of 1:2 (two fillets to one whole fish). If Atlantic bluefish are filleted into single (butterfly) fillets, such fillets shall be deemed to be whole Atlantic bluefish.

(4) Atlantic bluefish harvested from party and charter boats or other vessels carrying more than one person may be commingled. Compliance with the daily possession limit will be determined by dividing the number of Atlantic bluefish on board by the number of persons aboard, provided, however, that if a person or persons aboard are fishing under a permit meeting the requirements of § 648.4(a)(8), his/her catch shall not be counted for determining compliance with the possession limit, if it is maintained in the possession of such person(s). If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and/or operator.

(b) *Adjustment of the possession limit.* After notice and 15 days opportunity for public comment, NMFS may adjust the possession limit within a range of 0

to 15 Atlantic bluefish based on a recommendation of the MAFMC and Commission. NMFS will publish a notice of any proposed adjustment, together with the basis for such adjustment, in the FEDERAL REGISTER. After consideration of any public comments, NMFS may adjust the possession limit by publishing a notice of adjustment in the FEDERAL REGISTER.

§ 648.162 Catch monitoring, commercial controls, and gear restrictions.

(a) The Bluefish Committee will review bluefish catch statistics, a projection of the commercial share for the next fishing year, and the most recent stock assessment prior to August 15th of each year. The Bluefish Committee will report to the MAFMC and the Commission.

(b) The MAFMC and the Commission will review the report of the Bluefish Committee. If the report indicates that the commercial catch for the next fishing year will equal or exceed 20 percent of the total catch (recreational catch plus commercial landings) of Atlantic bluefish, the MAFMC and Commission will propose the commercial controls to be implemented at the start of the upcoming year. If the report indicates that the commercial catch will be greater than 17 percent but less than 20 percent of the total catch of Atlantic bluefish, or that the commercial share for the last full year is 50 percent greater than the previous year's commercial share, the MAFMC and Commission will determine whether commercial controls are necessary. In making such a determination the MAFMC and Commission will consider:

- (1) The most recent catch data.
- (2) Trends in the fishery.
- (3) Any other relevant factors.

(c) If the catch in the commercial fishery is projected to equal or exceed the 20 percent limit during the upcoming year, then a state allocation system will be implemented. This will entail the use of landings data from the most recent 10-year period for each state, to determine the average percentage of each state's coastwide commercial landings. These percentages will be used to determine the amount of the coastwide quota allocated to each state. Quotas will apply to land-

ings in each state, regardless of where the bluefish were caught.

(d) If whole Atlantic bluefish are processed into fillets at sea, then fillet weight will be converted to whole weight at the state of landing by multiplying fillet weight by 2.5. If whole Atlantic bluefish are headed and gutted at sea, then the conversion is accomplished by multiplying headed/gutted weight by 1.5.

(e) If the MAFMC concludes that the increase in the commercial catch is attributable to the use of purse seines, pair trawls, or encircling (runaround) gillnets, then it will propose restrictions applicable to that gear type. In determining what restrictions are necessary to control the catch of Atlantic bluefish by commercial fishermen using these gear types, the MAFMC may consider:

- (1) Trip limits;
- (2) Area closures;
- (3) Banning the use of these gear types; or
- (4) Any other measures it deems appropriate.

(f) The Regional Administrator will review any gear restrictions proposed by the MAFMC. If the Regional Administrator concurs that the proposed gear restrictions are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Administrator will recommend that NMFS publish a notice of the proposed restrictions in the FEDERAL REGISTER with a 30-day public comment period. After publication of such notice and after consideration of any public comments, NMFS may impose such restrictions by publishing a notice of gear restrictions in the FEDERAL REGISTER.

(g) NMFS may rescind any gear restriction if it finds, based on the advice of the MAFMC through the process set forth in paragraphs (a) and (b) of this section, that the restriction is no longer necessary.

§ 648.163 Closure of the fishery.

The Regional Administrator shall close the commercial fishery for Atlantic bluefish in the EEZ if the commercial fisheries for Atlantic bluefish have been closed in all Atlantic coastal states.